



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This is an application by the tenant for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the return of double the amount of the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit, and if so for what amount?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a trailer in a manufactured home park where the landlord owns both land and trailers. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease starting on August 1st, 2010, and was to end July 30th, 2011. The rent was \$900.00 per month. The tenants paid a security deposit of \$450.00 and a pet damage deposit of \$450.00 for a deposit totalling \$900.00.

The tenant testified that she could no longer afford the rent and gave written notice to the landlord on February 4th, 2011 that she would end the tenancy on March 1st, 2011. She stated that she found friends who would take over the tenancy in March and that the landlord originally agreed, but later changed his mind and refused to rent the unit to her friends.

In her documentary evidence, the tenant provided a copy of a letter submitted to the landlord dated June 10th, 2011, in which she requests the return of her security deposit and provides the landlord with her forwarding address.

The landlord testified that he was out of the country when the tenant delivered the notice to end tenancy, and that it was delivered a different address; therefore he said that he did not receive the notice until March 3rd or 4th. He said that he agreed on the phone to allow the tenant's friends, but that after verification he decided not to rent them the unit. He said that the unit was left in a dirty condition and that he had to change the carpets. He said that he recovered the rent cheque for March 2011 through a collections agency. He said that he found a new tenant, and that the tenant agreed to one month's free rent in exchange for cleaning the unit.

Analysis

Section 38(1) of the *Residential Tenancy Act* provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the landlord received the tenant's forwarding address in writing.

Section 38(6) of the *Residential Tenancy Act* provides in part that if a landlord does not comply with his statutory obligation to return the security deposit within 15 days, the landlord must pay the tenant double the amount of the deposit.

In this matter the landlord received the tenants' forwarding address, but the security deposit was not returned and the landlord did not apply for dispute resolution as required by statute. Therefore the tenants are entitled to the return of double the amount of the security deposit.

Section 60(1) of the Act provides also for the landlord to make an application for dispute resolution over matters related to the tenancy within two years after the tenancy ends. The landlord is entitled to claim monetary compensation against the tenants for any damages alleged, and to submit evidence at that time.

Concerning the rent cheque for March; Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. The landlord is not obliged to enter into a tenancy agreement with candidates that he deemed were unsuitable. I find that the tenants ended the tenancy early and that the landlord is entitled to recover the loss of rental income for March 2011. Therefore I dismiss this aspect of the tenants' claim.

Conclusion

The tenant established a claim of \$1800.00. Since she was partially successful, the tenant is entitled to partial recovery of the filing fee for \$25.00 and pursuant to Section 67 of the Act, I grant the tenants a monetary order for the sum of \$1825.00

This Order may be registered in the Small Claims Court and enforced as an order of that Court. This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: September 27, 2011.

Residential Tenancy Branch