



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to cross applications.

The Landlord filed an Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for a monetary Order for money owed or compensation for damage or loss and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. There is nothing in the Landlord's Application for Dispute Resolution that would cause me to conclude that they have applied to retain the Tenant's security deposit.

The Tenant filed an Application for Dispute Resolution, in which the Tenant has made application for a monetary Order for money owed or compensation for damage or loss; for "Other", for authority to serve documents or evidence in a different way than is required by the *Residential Tenancy Act (Act)*; and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution. It is readily apparent from information included on the Tenant's Application for Dispute Resolution that the Tenant is seeking the return of their security deposit, and the application has been amended accordingly.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The Tenant served documents to the Landlord by mail however the Tenant neglected to submit copies of those documents to the Residential Tenancy Branch. As the evidence was not before me, it was not considered as evidence at these proceedings.

As the Tenant was able to serve documents to the Landlord in accordance with the legislation, I find there is no need to consider the Tenant's application for authority to serve documents or evidence in a different way than is required by the *Act*.

The Tenant is seeking compensation for wages allegedly owed to the Tenant for work done to the rental unit. As the agreement to work on the rental unit was not a term of the tenancy agreement between the parties, the parties were advised that I do not have jurisdiction over any wages owed.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for expenses incurred as a result a late notice to end the tenancy agreement; whether the Tenant is entitled to the return of their security deposit; and whether either party is entitled to recover the filing fee for this Application for Dispute Resolution from the Tenant, pursuant to sections 38, 67, and 72 of the *Act*.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on October 01, 2009; that the Tenant was required to pay monthly rent of \$1,600.00 on the first day of each month; that the Tenant paid a security deposit of \$800.00; that a Condition Inspection Report was not completed at the start of the tenancy; that on July 05, 2011 the Tenant sent the Landlord an email, in which the Tenant advised the Landlord of their intent to vacate the rental unit during the latter portion of July; that the rental unit was vacated on July 30, 2011; that the Tenant sent the Landlord a text message on July 30, 2011, in which the Tenant provided the Landlord with a forwarding address; that a Condition Inspection Report was completed at the end of the tenancy; that the Landlord did not return any portion of the security deposit; and that the Tenant did not authorize the Landlord to retain any portion of the security deposit;

The female Landlord stated that she was unable to enter into a new tenancy agreement for August 01, 2011, as she was aware the written notice the Tenant had provided was not proper notice and that the Tenant could have retained possession of the rental unit until the end of August. The Landlord is therefore seeking compensation for loss of revenue from August of 2011.

Analysis

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,600.00 on the first day of each month; that the Tenant paid a security deposit of \$800.00; that on July 05, 2011 the Tenant provided written notice, via email, of their intent to vacate the rental unit by the end of July; that the Tenant did vacate the rental unit on July 30, 2011; that on July 30, 2011 the Tenant provided the Landlord with

a forwarding address in writing, via text messaging; that the Landlord did not return any portion of the security deposit; that the Tenant did not authorize the Landlord to retain any portion of the security deposit; and that the Landlord did not file an Application for Dispute Resolution claiming against the deposit.

On the basis of the undisputed evidence presented at the hearing, I find that the Landlord did not complete a Condition Inspection Report at the start of the tenancy. As the Landlord was the first party to forfeit the right to claim against the security deposit when they failed to complete a Condition Inspection Report at the start of the tenancy, I find that I do not need to consider whether the Tenant also extinguished their right to the return of their security deposit by not participating in a Condition Inspection Report at the end of the tenancy. Even if the Tenant had breached the *Act* by not participating in a condition inspection at the end of the tenancy, the Landlord was the first to breach the *Act* with regards to the inspections and they, therefore, are the first to forfeit their right to the security deposit.

Section 45 of the *Act* stipulates that a tenant may end a periodic tenancy by providing the landlord with written notice to end the tenancy on a date that is not earlier than one month after the date the Landlord received the notice and is the day before the date that rent is due.

To end this tenancy on July 31, 2011 in accordance with section 45 of the *Act*, the Tenant was required to give notice of her intent to vacate on, or before, June 30, 2011.

Section 53 of the *Act* stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the notice that was given on July 05, 2011 was August 31, 2011. Therefore, I find that the notice to end tenancy that was given on July 05, 2011 effectively ended this tenancy on August 31, 2011.

I find that the written notice provided to the Landlord did not give the Landlord the right to regain possession of the rental unit until the Tenant abandoned the rental unit or until August 31, 2011. I find that the Landlord could not rent this unit to a new tenant until the Tenant had physically abandoned the rental unit on July 30, 2011. As the late notice significantly interfered with the Landlord's ability to re-rent the rental unit for August 01, 2011, I find that the Landlord is entitled to compensation for the loss of revenue they experienced during August of 2011.

Section 38(1) of the *Act* stipulates that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit and/or pet damage deposit plus interest or make an application for dispute resolution claiming against the deposits. In the circumstances before me, I find that the Landlord failed to comply with section

38(1), as the Landlord has not repaid the security deposit or filed an Application for Dispute Resolution.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1), the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did not comply with section 38(1) of the *Act*, I find that the Landlord must pay the Tenant double the security deposit that was paid.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$1,600.00, which represents loss of revenue from August of 2011. I find that the Tenant has established a monetary claim, in the amount of \$1,600.00, which represents the return of double the security deposit. After offsetting the two monetary claims, I find that neither party is owed money.

I find that the Application for Dispute Resolution that has been filed by both parties each have merit. I therefore find that each party is responsible for the costs of filing their own Application for Dispute Resolution.

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 29, 2011.

Residential Tenancy Branch