

DECISION

Dispute Codes MND, MNSD, FF, MND, MNR

Introduction

There are applications filed by both parties. The Landlord is seeking a monetary order for damage to the unit, for lost rental income, to keep all or part of the security deposit and recovery of the filing fee. The Tenant is seeking the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. Both parties made detailed reference to the evidence submitted by the other party. As such, I am satisfied that each party was properly served with the notice of hearing and evidence packages submitted.

Issue(s) to be Decided

Is the Tenant entitled to the return of double the security deposit?

Is the Landlord entitled to a monetary order for damage and loss of rental income?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on February 15, 2011 on a month to month basis as shown in the submitted signed tenancy agreement. The monthly rent was \$700.00 payable on the 1st of each month. A security deposit of \$350.00 was paid on February 15, 2011.

Both parties agreed that the Tenant gave notice on September 1, 2011 to the Landlord to end the tenancy on September 30, 2011. The Tenant moved out on September 30, 2011. The Tenants gave their forwarding address in writing between October 5 and 10, 2011. The Landlord confirms this because she stated that upon receiving it, she filed for dispute on October 11, 2011.

The Landlord is seeking compensation for lack of notice of \$700.00 for loss of October rental income. The Landlord stated in direct testimony that upon being notified on September 1, 2011 that the Tenant was vacating the rental unit that she did not advertise to re-rent the unit until after September 30, 2011.

The Landlord is also seeking \$350.00 for damages and cleaning costs to the rental which was left by the Tenant. The Landlord relies on photographs taken at the end of the tenancy and a list.

This consists of holes in the drywall, dirty and stained carpets requiring shampooing/cleaning for \$200.00 plus HST, walls covered in grease, fingerprints and stains requiring painting for \$70.00 plus HST, damaged main entrance door for \$50.00, damaged blinds for \$45.00 plus HST, stained and dirty blinds, dirty washroom, dusty and stained cupboards in the kitchen, dusty and stained oven, stove and fridge for \$200.00, dirty and dusty window ledges and windows, damaged wooden gate with a broken latch for \$80.00 and the outside vinyl siding dirty with food debris, smoke ashes and dirt for \$100.00. The Tenant disputes these claims stating that unit was for the most part in this condition when they moved in. Both parties agreed that no condition inspection report for the move-in or the move-out was performed. The Landlord has not submitted any receipts, invoices or estimates of any costs incurred. The Landlord stated in her direct testimony that she could not find anyone to come into the rental to clean and repair the unit.

Analysis

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find based upon the direct testimony of both parties that as the Landlord applied for dispute within 15 days of receiving the Tenant's forwarding address in writing that the Tenant is not entitled to the return of double the security deposit. The Tenant's application is dismissed.

Section 45 of the Residential Tenancy Act states,

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,
and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Although the Tenant failed to properly give notice to end the tenancy with the Landlord, I find that the Landlord failed to mitigate her losses by trying to re-rent the unit. There could not have been any expectation of loss if the Landlord did not advertise the unit for rent. The Landlord's claim for loss of rental income is dismissed.

The Landlord's claim for damages and cleaning costs of \$350.00 has not been established. I find that the Landlord has failed to provide sufficient evidence that any damages or cleaning costs were suffered. The onus or burden of proof lies with the Landlord as she is the applicant. The Landlord's claim for damages and cleaning losses is dismissed.

As both parties have been substantially unsuccessful in their applications, I decline to make any orders for the recovery of filing fees for both parties.

I order that the Landlord return the \$350.00 security deposit to the Tenant and grant a monetary order to this effect.

Conclusion

The Tenant is granted a monetary order for the return of the \$350.00 security deposit.

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: December 21, 2011.

Residential Tenancy Branch