



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to applications by the tenant and the landlord.

The tenant's application is seeking an order as follows:

1. Return of double the security deposit.

The landlord's application is seeking orders as follows:

1. Monetary order for unpaid rent or utilities;
2. To keep all or part of the security deposit; and
3. For money owed or compensation for damages or loss under the Act, regulation or tenancy agreement.

Both parties appeared gave affirmed testimony and were provided the opportunity to present their evidence and make submission to me.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit?

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled for money owed or compensation for damages or loss under the Act, regulation or tenancy agreement?

Background and Evidence

The tenancy began on July 1, 2010. Rent in the amount of \$875.00 was payable on the first of each month. A security deposit of \$440.00 was paid by the tenant. The tenancy agreement states the landlord will pay all utilities. The parties agree tenancy was to end on July 31, 2011.

Landlord's application

Rent and loss of revenue

The landlord testified that she entered into a new tenancy agreement with new tenants for August 1, 2011. The new tenants paid rent for August 2011, and they were planning to move into the rental unit on August 17, 2011.

The landlord further testified the tenant was not out of the rental unit until the end of August, 2011, and the tenant did not negotiate with her to be allowed to stay longer in the rental unit. The landlord is seeking rent in the amount of \$875.00 for the month of August, 2011 and is seeking to off-set the amount of rent owed with the security deposit paid by the tenant.

The landlord further testified the new tenants paid rent for August 2011, and since the tenant was not out by July 31, 2011, she reduced the new tenants rent by \$500.00, and is seeking loss revenue in the amount of \$500.00.

The tenant testified that he had permission from the new tenants to stay a few extra days as the new tenants were not planning to move into the rental unit until August 17, 2011 and since the landlord has received rent from the new tenant he is not required to pay rent.

The tenant testified that all his stuff was out of the rental unit by August 17, 2011, except for some items the new tenants asked to borrow from him until their furniture arrived and he did have some of his personal property left in the garage.

The landlord submitted documentary evidence in the form of emails between her and the new tenants. There is nothing in the new tenant's emails that would indicate that the new tenants invited the tenant to stay at their expense. The email of August 21, 2011, contradicts the tenant's evidence regarding the furniture left behind, the email indicates they do not want these items. The email of August 26, 2011, indicates the tenant is almost gone just a few thing left and the email of August 29, 2011, indicated the new tenants are moving in their furniture.

Utilities for June, July, August

The landlord testified that she is seeking an extra \$150.00 for utilities for the month of June, July and August 2011, as the tenant had an occupant residing in his rental unit.

The landlord further testified that it was only a guess that this occupant used \$50.00 in utilities per month.

The tenant testified that the tenancy agreement says the landlord is to pay all the utilities and he does not feel that he is required to pay when someone extra is staying at the rental unit.

Extra storage fee

The landlord testified she is seeking \$240.00 from the tenant for excessive storage that she allowed the tenant to use. The landlord further testified that she never has asked the tenant prior to this hearing to pay extra cost for storage and it is not in the tenancy agreement.

The tenant testified that he was never asked to pay extra costs for storage fees.

Travel expenses, postage, and mileage fees

The landlord testified that she had to come to the island several time to serve papers on the tenant and is seeking compensation for ferry fees, bus fair – translink, mileage for gas consumption and food.

I did not require the tenant to make submission on these issues.

Tenant's Application

Return of double the security deposit

The tenant testified that he is seeking double the security deposit paid to the landlord, as he gave written notice of his forwarding address to the landlord on September 21, 2011. He sent that notice regular mail to the landlords address.

The landlord testified that she did receive the written notice of the tenants forwarding address at the end of September 2011, and she was not going to return the security deposit until the tenant paid the rent that was due for August 2011.

Analysis

Based on the above, the testimony and documentary evidence, and based on the balance of probabilities, I find as follows:

Rent and loss of revenue

The parties agreed that the tenancy was to end on July 31, 2011, and the tenant did not have his furnishings removed from the rental unit or the property as required. The tenant did not have the permission of the landlord to stay at the rental unit after July 31, 2011.

The tenant did not call the new tenants to testify on his behalf, and did not provide any documentary evidence that the new tenants allowed him to remain as an occupant in the rental unit. The landlord has filed emails into evidence from the new tenants to support her claim that they were waiting for the rental unit to be vacated and the new tenants were not able to move their furniture in the rental unit until August 29, 2011.

I find the tenant was overholding in the rental unit.

Section 57 (1) of the Act defines overholding as a tenant who continues to occupy a rental unit after the tenant's tenancy is ended.

I find the landlord is entitled for rent for the month of August 2011, in the amount of \$875.00. As the new tenants paid rent for August 2011, and their rent was reduced by \$500.00 to accommodate the overholding of the tenant, I find the only loss the landlord incurred is \$500.00. I grant the landlord a monetary order in the amount of \$500.00 for rent and loss of revenue, subject to any offset described below.

Utilities for June, July, August

I dismiss the landlord's application to recover utilities fees in the amount of \$150.00 as the tenancy agreement indicates the landlord will pay all utilities. The tenancy agreement does not say the tenant would be required to pay additional fees should an occupant move into the rental unit, and the landlord has not filed any documentary evidence of the actual cost incurred by her. The landlord's evidence was that it was a guess.

Extra storage fee

I dismiss the landlord's application for cost of extra storage. This was never discussed with the tenant during his tenancy and is not in the tenancy agreement.

Travel expenses, postage, and mileage fees

I dismiss the landlord's application to recover travel expenses, postage, and mileage. There is no provision under that Act that would allow the landlord to charge the tenant travel expense, postage and mileage, as these are the cost of doing business.

Return of Security deposit.

The landlord did acknowledge that she received the tenants forwarding address at the end of September 2011. The landlord testified she was not returning the security deposit until the August 2011, rent was paid.

Section 38(1) Return of security deposit and pet damage deposit 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 the landlord did not comply with section 38 of the Act. The landlord did not make an application for dispute resolution claiming against the security deposit within 15 days of receiving the tenants forwarding address. The landlord's application was filed outside the timeline, and only after the tenant's application was filed.

Therefore, I find the tenant is entitled to double the security deposit. The security deposit paid by the tenant was \$440.00. I grant the tenant a monetary order in the amount of \$880.00.

The tenant's monetary order of \$880.00 will be off set with the landlord's monetary order of \$500.00. I grant the tenant a monetary order for the balance due of \$330.00.

I further find that both applications were successful and as both parties paid the same fee, I am not awarding filing fees for either application, These are setoff.

Conclusion

I dismiss the landlord's application for unpaid utilities, extra storage and to be reimbursed for travel expenses.

I grant the landlord a monetary order for unpaid rent and loss of revenue and it will be off-set by the monetary that I have granted the tenant. The tenant is granted a monetary order for the balance due.

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 07, 2011.

Residential Tenancy Branch