



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNR, MNSD, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover unpaid rent, the cost of cleaning and the filing fee. The landlord applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a monetary claim for unpaid rent and cleaning? Is the landlord entitled to retain the security deposit and recover the filing fee?

Background and Evidence

The rental unit consists of a three bedroom suite. The landlord rented the unit to two female tenants JA and MA who occupied a bedroom each and shared a kitchen and washroom. One of the tenants, JA found a tenant to rent the third bedroom. This third tenant NF, who is the respondent in this dispute, paid her rent and security deposit to JA and moved into the unit in July, 2010. NF did not have a contractual relationship with the landlord. For the first year of the tenancy, she paid her rent directly to JA. The total rent for the three bedrooms was \$1,600.00. Each tenant paid \$533.33.

MA moved out and was replaced by AM. AM entered into a tenancy agreement directly with the landlord. JA moved out on July 31, 2011. The landlord stated that he returned JA's portion of the security deposit and held NF's portion of \$266.66.

NF continued to occupy the rental unit after the departure of JA. There was no written tenancy agreement between the two parties. The landlord accepted rent from NF for August in the amount of \$533.33. However, he insisted that she pay JA's share of rent too. The tenant refused to pay rent for the vacant bedroom and on August 31, 2011, the landlord served her with a ten day notice to end tenancy for non payment of rent. The tenant did not dispute the notice and moved out on the effective date of the notice, September 10, 2011.

The landlord is claiming rent for the room left vacant by JA for both August and September in addition to NF's rent for September for a total of \$1,599.00.

The landlord also filed photographs of the unit after the tenant moved out. The landlord stated that the tenant left behind some unwanted items. The tenant agreed to having left behind a kitty litter box, a scanner and a dresser. The landlord stated that he hauled these items away to the dump at a cost of \$18.00. The landlord has applied to retain the entire security deposit towards the cost of cleaning the unit, but did not file any evidence by way of invoices, receipts or a breakdown to support his claim.

Analysis

Based on the testimony of both parties and the documentary evidence in front of me, I find that for the first year of the tenancy, the landlord did not have a contractual relationship with the tenant. The tenant paid her rent and security deposit to JA, thereby making their relationship one of landlord and tenant.

When JA moved out on July 31, 2011, the tenant paid her rent for August directly to the landlord, in the amount of \$533.33. In the absence of a written agreement, by accepting her rent, the landlord entered into a contract with the tenant to rent one bedroom of the rental unit for a monthly rent of \$533.33. I find that the tenant was not obligated to pay rent for the room that was vacated by JA and therefore does not owe rent for the month of August or September for this room.

Based on the NF's failure to comply with the landlord's request for an additional \$533.33, the landlord served her with a notice to end tenancy. NF moved out as per the effective date of the notice. I find that the landlord was not in compliance with the *Residential Tenancy Act*, when he demanded rent in excess of the amount of their implied contract, as set by his acceptance of \$533.33 for rent. Therefore the tenant was forced to move out as she was not agreeable to the demands of the landlord. Since the tenant moved out based on the landlord's demands for additional rent, I find that she is not liable for rent for the full month of September. However since she moved out on September 10, I find that she must pay prorated rent for the time she spent in the unit. Accordingly, the tenant must pay \$177.70 for rent for September.

Other than black and white prints of photographs, the landlord did not file any evidence to support his claim of \$266.66 towards cleaning and clearing the unit of the items left behind by the tenant. The tenant agreed to having left behind some items. Even though the landlord did not file an invoice, I accept that he hauled some items to the dump at a cost of \$18.00.

Residential Tenancy Policy Guideline #16 states that an arbitrator may award “nominal damages” which are a minimal award. These damages may be awarded where there has been no significant loss, but they are an affirmation that there has been an infraction of a legal right. Based on the relatively small number of items left behind by the tenant, I find it appropriate to award the landlord \$30.00 for the inconvenience of removing and transporting the items left behind by the tenant to the dump.

The landlord agreed that he had received and was in possession of the tenant’s security deposit in the amount of \$266.66.

Since the landlord has been partially successful in his application, I award him \$25.00 towards the filing fee.

Overall the landlord has established a claim of \$232.70 which consists of:

1.	Prorated rent for September	\$177.70
3.	Filing fee	\$25.00
	Total	\$232.70

I order that the landlord retain this amount from the security deposit of \$266.66 in full satisfaction of the claim and return the balance of \$33.96 to the tenant within 15 days of receipt of this decision.

Conclusion

The tenant is entitled to the return of the balance of the security deposit in the amount of **\$33.96**. I order the landlord to return this amount within 15 days of receipt of this decision.

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