



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order in the amount of \$1895.00 and a request to retain the security deposit and pet deposit towards that claim. The landlord is also requesting recovery of the \$50.00 filing fee.

The tenant's application is a request for a monetary order for return of double their security deposit and pet deposit for a total of \$3790.00. The tenants are also requesting recovery of the \$50.00 filing fee.

Background and Evidence

This tenancy began on January 1, 2011 for a one year fixed term, and at that time the tenants paid a combined security/pet deposit of \$1895.00.

The tenancy ended on August 31, 2011, and the tenants mailed the landlords a forwarding address in writing by registered mail that was mailed on September 26, 2011.

The landlord testified that:

- In the tenancy agreement the tenants agreed to pay liquidated damages in the amount of \$1895.00 if they terminated the tenancy prior to the end of the fixed term.
- They always set their liquidated damages at one month's rent, as they find that one month's rent will generally cover all costs of re-renting the unit.
- The tenants did leave before the end of the term of the tenancy however they were able to re-rent the unit and did not lose any rental income.
- They did have re-renting costs however of ½ month's rent and they did offer to settle for that amount with the tenants, however the tenants rejected that offer.
- They are therefore now requesting the full amount of the liquidated damages agreed upon in the tenancy agreement.

The tenants testified that:

- They do not believe it's reasonable for the landlord to charge the full liquidated damages amount agreed upon in the tenancy agreement because the landlord was able to re-rent the unit right away did not lose any rental income.
- At the beginning of the tenancy, when speaking with the landlord, they understood that if the rental unit was re-rented without any loss of income they would not be charged the liquidated damages.
- They also believe that the liquidated damages amount is excessive because it does not cost the landlord that amount to re-rent the unit.
- The landlord did not offer to settle for the one half months rent, however they believe one half months rent would be a reasonable amount, but not the full month's rent claimed by the landlord.

- They had claimed double the security deposit, because the landlord did not file his claim within the 15 day time limit after they originally sent the landlord and e-mail with their forwarding address.

Analysis

First of all I want to state that the tenants do not qualify for an order for return of double their security/pet deposit, because the landlord did apply for dispute resolution within the time limit set under the Residential Tenancy Act.

The tenant stated that they originally sent the landlord and e-mail with her forwarding address, however e-mail is not a method of service that is recognized under the Residential Tenancy Act.

The tenants subsequently did send a forwarding address in writing by registered mail on September 26, 2011, however the landlord apply for dispute resolution on October 4, 2011 and therefore was well within the 15 day time limit required under the Residential Tenancy Act.

With regards to the landlords claim for liquidated damages in the amount of \$1895.00, it is my decision that I will not allow the full amount claimed by the landlord.

When establishing liquidated damages in a contract, the amount of those damages must be a reasonable pre-estimate of what the cost will be should be parties breached the tenancy agreement and in this case I am not convinced that one full month's rent is a reasonable pre-estimate of what the costs to the landlord would be to re-rent the unit.

When I asked the landlord how they arrived at the amount set for liquidated damages he stated that they always set it at one month's rent as they find that that will usually cover all the costs of re-renting, however I do not find this to be a reasonable way of

estimating the costs of re-renting the unit. Had the landlord shown that on previous occasions the cost to re-rent the unit had turned out to be approximately 1 month rent and then perhaps it would seem reasonable however has not shown that.

Therefore it is my decision that I will only allow 1/2 the amount claimed for liquidated damages as I find that is likely a more reasonable estimate of what the re-renting costs would be.

I therefore allow a portion of both the landlord and the tenants claim, and I therefore also order that both the landlord and tenant bear the cost of the filing fees they paid.

Conclusion

Landlords application

I have allowed \$947.50 of the landlords claim, and I therefore order that the landlord may retain the full security deposit of \$947.50 in satisfaction of this claim. The remainder of the landlords claim is dismissed without leave to reapply.

Tenants application

As stated earlier I have allowed the landlord to keep the full security deposit in satisfaction of his claim and therefore I have only allowed \$947.50 of the tenants claim. I have issued an order for the landlord to return the pet deposit of \$947.50 to the tenants. The remainder of the tenants claim is dismissed without leave to reapply.

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 19, 2011.

Residential Tenancy Branch