



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, MNR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on October 19, 2011 for:

1. A Monetary Order for return of the security and pet deposit – Section 38,
2. A Monetary Order for compensation or loss - Section 67;
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on November 3, 2011 for:

1. A Monetary Order for compensation for loss – Section 67;
2. A Monetary Order for unpaid rent - Section 67; and
3. An Order to retain all or part of the security and pet deposit – Section 38;
4. An Order to recover the filing fee for this application - Section 72.

Preliminary Matter

These matters were set for a conference call hearing at 9:00 a.m. on this date. The line remained open while the phone system was monitored for ten minutes. The only participant who called into the hearing during this time was the Tenant. The Landlord failed to attend to present their claim. The Tenant was ready to proceed. In the absence of the Landlord, I dismiss the Landlord's claim without leave to reapply.

I accept the Tenant's evidence that the Landlord was served with the Tenant's application for dispute resolution and notice of hearing by personal service on October 20, 2011 in accordance with Section 89 of the Act. The Tenant was given full opportunity to be heard, to present evidence and to make submissions on its claim.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Tenant entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on July 1, 2010 for a fixed term to February 29, 2011. Rent in the amount of \$1,750 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$875.00 and a pet deposit in the amount of \$600.00. A move-in inspection was conducted between the Parties however the Landlord did not make any request or offer of time for a move-out inspection and the Tenant states that the Landlord conducted this inspection alone sometime after the end of the tenancy and advised the Tenant that the unit was in immaculate condition. The Tenant provided her forwarding address to the Landlord in the body of her application for dispute resolution, served to the Landlord on October 20, 2011.

Prior to entering into the tenancy agreement, the Tenant was told by the Landlord that a re-rental fee in the amount of \$250.00 plus H.S.T. for advertising costs would become payable if the Tenant ended the lease prior to the fixed end date. The Tenant was told that if this amount was paid, the Tenant would be able to end the lease early without penalty or further rent payments. It is noted that neither Party provided a copy of the tenancy agreement as evidence. On August 31, 2011, the Tenant gave a month's notice to end the tenancy on September 30, 2011. On this date the Tenant also paid the Landlord the re-rental amount of \$280.00 to end the tenancy agreement as agreed. At this point, the Landlord informed the Tenant that October 2011 rent was payable by the Tenant if the unit was not rented for that month. The Tenant provided a letter dated October 1, 2011 that sets out the Tenant's agreement to relinquish the security and pet deposit against the October rent.

On or about October 9, 2011, the Landlord informed the Tenant that if the Tenant did not pay an extra \$275.00 to make up the full rent payable the Landlord would pursue legal remedies "to the fullest". The Tenant states that she felt she had no choice but to pay this amount. The Tenant argues that given the payment of the re-rental amount in August 2011, the Landlord had no right to any rent for October 2011 from the Tenant. The Tenant further states that the Landlord did nothing to pursue renters during the month of September 2011. Further the Tenant states that the Landlord only showed the unit to one person in October 2011 and therefore does not have the right to retain the security and pet deposit as agreed by the Tenant. It is noted from the evidence filed by the Landlord that a rental advertisement for the unit is dated December 17, 2011 and no further evidence was provided on the dates or actions taken by the Landlord to rent the unit. The Tenant claims return of the security and pet deposit in the amount of \$1,475.00 plus the amount of \$275.00 paid on or about October 9, 2011. The Tenant also claims recovery of the \$50.00 filing fee.

Analysis

Section 38 of the Act provides that a landlord may retain an amount from a security or pet deposit if the tenant agrees in writing at the end of a tenancy that the landlord may retain the amount to pay a liability or obligation of the Tenant. Based on the undisputed evidence of the Tenant, I find that the re-rental fee agreed to by the Parties is a fee that upon payment would allow the Tenant to end the fixed term tenancy agreement without further liability. Accepting the undisputed evidence of the Tenant, I find that the Tenant paid this fee as agreed and that no liability therefore accrued for October 2011 rent. Given that there was no liability payable for October 2011, I find that the Landlord could not obtain any authorization from the Tenant to retain the security and pet deposit against this rental amount nor was the Tenant obliged to pay the extra amount of \$275.00. I find therefore that the Tenant has substantiated an entitlement to return of her security and pet deposit plus interest in the amount of **\$1,475.00** and the sum of **\$275.00**. The Tenant is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,800.00**.

Conclusion

I grant the Tenant an order under Section 67 of the Act for the amount of **\$1,800.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: January 12, 2012.

Residential Tenancy Branch