



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlord – MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The tenant has applied for the return of double his security and pet deposits and to recover the filing fee from the landlords for the cost of this application. The landlords have applied for a Monetary Order for unpaid rent; for an Order permitting the landlords to keep all or part of the tenant's security and pet deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The landlord states she did not receive the tenant's evidence package but the tenant has provided evidence that this was sent to the landlord by registered mail on November 10, 2011. This evidence is deemed to have been served on the fifth day after posting. Therefore this evidence was not received by the landlord five days before the hearing and the documentary evidence has not been considered in my decision. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to recover double his security and pet deposits?
- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the tenants security and pet deposits?

Background and Evidence

Both parties agree that this month to month tenancy started on December 16, 2010. Rent for this unit was \$650.00 due on the first day of each month. The tenant paid a security deposit of \$325.00 and a pet deposit of \$325.00 on December 01, 2010. The tenant moved from the rental unit on June 01, 2011.

The tenant testifies that when the tenancy started there was a different landlord. The landlord sold the property to these landlords sometime around April or May, 2011. The tenant testifies that he was not given the new landlords name, address or contact details at that time and had to ask another tenant for a telephone number for the landlord to find out who he should make his rent cheques out to. The tenant states he was not introduced to the new landlords and they did not update his tenancy agreement with their details as required under the *Residential Tenancy Act*.

The tenant states he decided to move from the rental unit and as he did not have an address for the new landlords to give them his notice he telephoned this landlord and verbally gave notice to end his tenancy on May 01, 2011. The tenant testifies that this landlord told him it was "OK, you can move out" The tenant testifies he asked this landlord when they could come and do a move out condition inspection of the unit. The tenant states he kept calling this landlord and left messages for them to do the inspection but the landlords did not return his calls and kept putting off the dates for the inspection. The tenant testifies eventually he went to this landlord's place of work as indicated in her answering phone message and spoke to the landlord there. The tenant testifies this was the first time he met the landlord. The tenant testifies this landlord claimed she had nothing to do with the tenancy and she was only an employee of the

landlords company. The tenant states he asked this landlord for the correct landlord's information and for her last name but this landlord refused to give the tenant these details.

The tenant testifies he then went to do a land registry search to determine this information and he also did a company search. The tenant states it was only then that he discovered the landlords name, and address.

The tenant testifies he could not give the landlord his forwarding address in writing before he filed this application as he did not have the landlords name and address details. The tenant states his forwarding address was on the registered mail envelope as his return address when he served the landlord with the Notice of this hearing. The tenant seeks to recover double his security and pet deposit to the sum of \$1,300.00. The tenant also seeks to recover his costs involved in carrying out the searches for the landlords name and address of \$11.60 The tenant seeks to recover \$50.00 for his time and gas in making these searches and travelling to the landlords place of work and \$100.00 for the filing fees for two applications. The first application had to be cancelled as the tenant had not located the landlords address at that time and so could not serve them with the hearing documents within the three allowable days. The tenant testifies that the new tenants moved into his rental unit on June 15, 2011.

The landlord disputes the tenants claim. The landlord testifies they purchased the property in March, 2011 and she went to the property with her husband to introduce themselves to the three tenants' residing there. The landlord testifies that she left her business card with the tenant containing their contact information. The landlord testifies she has met the tenant once or twice. The landlord denies the tenant calling her to ask who's name to put on the rent cheques but states the tenant did call her on May 07, 2011 to inform her that he was moving out on June 01, 2011. The landlord testifies that she informed the tenant that he had to provide 30 days written Notice to end his tenancy. The landlord testifies that the tenant told her that 30 days notice was not mandatory. The landlord seeks to recover unpaid rent for June, 2011 of \$650.00 and

states the rental unit was not re-rented until July 15, 2011 on June 15, 2011 as suggested by the tenant.

The landlord argues that the tenant could have given written Notice to the landlord on May 01, 2011 when he left his rent cheque for them.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim for double his security and pet deposit; I have reviewed the testimony of both parties and find the landlord breached s. 13 of the *Act* by not providing a tenancy agreement with their name, address and telephone number when they took over the tenancy. I have also considered the tenants testimony that he did give the landlords his forwarding address on the envelope containing the hearing documents. In light of the fact that the landlords did not give the tenants an address or contact details and the tenant had to determine this for himself I consider that the landlords did receive the tenants forwarding address in writing on August 29, 2011. As this letter was sent by registered mail it was not deemed to have been served upon the landlords until September 03, 2011.

The landlords had 15 days from this date to either return the security and pet deposits or file an application to keep them pursuant to s. 38(1) of the *Act*. The landlords filed their application to keep the security and pet deposits on September 16, 2011. Therefore, I find the landlords did file their application within the 15 allowable days. Consequently, the tenant's application for the return of double his security and pet deposits is dismissed without leave to reapply.

With regard to the tenants claim to recover his costs in trying to determine the landlords correct name and address; It is my decision that the tenant would not have incurred these costs had the landlord complied with s. 13 of the *Act* and updated the contact information for the tenancy agreements. Consequently, I find the tenant has established

his claim for his costs for the company search of **\$11.60**. I also find the tenant is entitled to a reasonable sum for his time, effort and gas in establishing the landlords contact details and I find the sum of **\$50.00** to be a reasonable sum for this work.

With regard to the tenants claim to recover both his filing fees; as the tenant has been unsuccessful with his claim to recover double his security and pet deposits I find he must bear the cost of filing his own application. I also find the tenant would not be entitled to recover the filing fee paid for a previous application as the tenant choose to cancel that application therefore forfeiting any filing fee paid at that time.

With regard to the landlords claim for unpaid rent for June, 2011; I refer the parties to s. 45(1)(a) and 45(1)(b) and 45(4) of the *Act* which deals with a tenants notice to end tenancy. These sections of the *Act* state:

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.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 of the *Act* states;

In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

The tenant has argued that he could not give the landlord Notice to End Tenancy as he had no address to send it to. It is my decision that the tenant could have left a written Notice to end his tenancy with his last rent cheque provided for the landlord and he failed to do so.

Consequently I find the landlord is entitled to recover unpaid rent for June, 2011 of **\$650.00**.

With regard to the tenants testimony in which he states the landlords failed to complete either a move in or move out condition inspection. A landlord only extinguishes their right to file a claim against the security and pet deposits when they have failed to complete these inspections if their claim is for damages. As the landlords claim is for unpaid rent I find the landlords are entitled to keep the tenants security and pet deposit in satisfaction of the unpaid rent.

As the landlords have been successful with their claim I find they are entitled to recover their **\$50.00** filing fee from the tenant. As both parties are entitled to a monetary award I have offset the landlord's award against the tenant's award as follows:

Unpaid rent	\$650.00
Minus security and pet deposit	\$650.00
Costs incurred by the tenant	\$61.60
Less Filing fee for the landlord	\$50.00
Total amount due to the tenant	\$11.60

Conclusion

I HEREBY FIND in partial favor of the tenants' monetary claim. A copy of the tenants' decision will be accompanied by a Monetary Order for **\$11.60**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The remainder of the tenants claim is dismissed without leave to reapply

The landlords are entitled to keep the tenants security and pet damage deposits in satisfaction of unpaid rent.

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: November 21, 2011.

Residential Tenancy Branch