



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: FF, O
Tenant: MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to applications filed by the landlord and by the tenant. The landlord has applied for an order that the landlord recover the filing fee from the tenant for the cost of this application, and in the details section of the Application requests an Order of Possession and states that the tenant has failed to pay utilities or provide the landlord with one month's written notice to vacate the rental unit. The tenant has applied for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of this application.

The parties both attended the conference call hearing, provided affirmed testimony and were given the opportunity to cross examine each other. The landlord did not provide any evidence in advance of the hearing, however the tenant provided an evidence package to the Residential Tenancy Branch and to the landlord.

During the course of the hearing, the landlord advised that the tenant has vacated the rental unit, and therefore the landlord withdraws the application for an Order of Possession.

All evidence and testimony provided have been reviewed and are considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to recovery of the \$50.00 filing fee for the cost of this application?
Is the landlord entitled to keep the security deposit due to the tenant's failure to provide one month's written notice to vacate the rental unit, and due to the tenant's failure to pay utilities?
Is the tenant entitled to return of all or part of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that this month-to-month tenancy began on July 1, 2011 and the tenant moved out of the rental unit on October 15, 2011. Rent in the amount of \$720.00 per month was payable in advance on the 1st day of each month. On July 1, 2011 the landlord collected a security deposit from the tenant in the amount of \$220.00, and no pet damage deposit was collected.

The landlord testified that the tenant has 2 children and has access visits with them every 2nd weekend. The rental unit is a small basement suite, the landlord resides in the upper unit, and the parties share laundry facilities. The tenant's children were not only at the rental unit every 2nd weekend, but almost 4 days per week. The other parent of the children didn't send the children to the rental unit with a change of clothing, and as such, the tenant had to do laundry often.

The landlord further testified that the tenant was asked repeatedly for written notice of the tenant's intention to vacate the rental unit. The tenant finally gave written notice on October 4 or 5, 2011, but the notice contained no date. The landlord did not receive one month's written notice, and rather than claim a month's rent, the landlord requests an order permitting the landlord to keep the security deposit in lieu of the required written notice. The tenant paid rent for the month of October, 2011 and vacated the rental unit on or about October 15, 2011.

The landlord further testified that during the tenancy, the tenant would not allow the landlord to show the rental unit to perspective tenants. However, the landlord did enter the rental unit and stated that it smelled very bad, the sink was full of dirty dishes and rotting food; the landlord needed to deal with it.

The landlord also testified that the rental unit has been re-rented on or about November 2, 2011. The tenant provided the landlord with a forwarding address in writing on October 16, 2011 by way of text messaging, which was the address of the tenant's ex-spouse, not of the tenant.

The tenant testified that the rental term was 3 months. The landlord raised the utility bills because of the excess laundry, and yelled at the tenant about excess laundry and yelled at the tenant to turn lights off. The landlord made it difficult for the tenant to live there. The landlord was hostile, and called the police 3 times. The police advised the tenant to find another place to live.

On September 27, 2011 the tenant told the landlord that the tenant would be moving out, but the landlord had become so hostile and aggressive the tenant was not able to be there. The tenant stated that the landlord pushed the tenant out of the tenancy.

The landlord gave the tenant 24 hours notice to show the rental unit, but expected one written notice to be sufficient for any and all showings.

The tenancy agreement was not provided by the parties for this hearing, however the tenant testified that the agreement stated that the tenant was to pay 1/3 of the utilities. The tenant has not seen any utility bills, but paid \$100.00 towards utilities with the rent for October, 2011.

The tenant requests a monetary order for return of the \$220.00 security deposit and recovery of the \$50.00 filing fee for the cost of this application.

Analysis

The *Residential Tenancy Act* states that a tenant must provide one month's written notice to the landlord of the tenant's intention to vacate the rental unit, and that notice must be provided on the day before the day in the month that rent is payable under the tenancy agreement.

The *Act* also states that a landlord or a tenant who makes a claim must do whatever is reasonable to mitigate, or reduce the damage or loss suffered.

In this case, I find that the tenant did not provide written notice in accordance with the *Act*. I also find that the landlord has not suffered any loss because the landlord was able to re-rent the premises.

The *Act* also requires the landlord to return the security deposit and any pet damage deposit in full to the tenant within 15 days of the later of the date the tenancy ends and the date the tenant provides a forwarding address in writing, or file an application for dispute resolution within that 15 day period. If the landlord fails to do so, the tenant may be entitled to recover double the amount of the security deposit or pet damage deposit.

In this case, I find that the tenant provided the landlord with a forwarding address on October 16, 2011, which is acknowledged by the landlord. I find that whether or not the tenant actually moved to that address is of no consequence, as long as the landlord has an address to return the security deposit to. The landlord made an application for dispute resolution before receiving that forwarding address, and although the box on the application claiming the security deposit is not checked off, the details section of the

landlord's application speaks to unpaid utilities, and therefore, I find that the tenant is not entitled to double recovery of the security deposit.

Further, the landlord has not made a claim for any specific amount of unpaid rent or utilities, but testified that the rental unit was re-rented and the landlord has not suffered any loss of rent. Therefore, the landlord has mitigated any loss that may have been suffered and is not entitled to keep the security deposit.

Since the tenant has been successful with the claim before me, the tenant is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

I hereby grant a monetary order in favour of the tenant pursuant to section 67 of the *Residential Tenancy Act* in the amount of \$270.00. This order final and binding on the parties and may be enforced.

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 04, 2011.

Residential Tenancy Branch