



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent and an order to retain the security deposit in satisfaction of the claim.

Both parties appeared at the hearing and gave evidence.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether or not the landlord is entitled to monetary compensation for loss of rent.

Background and Evidence

The landlord testified that the tenancy began in April 2011, with rent of \$1,200.00 per month and at which time the tenant paid a security deposit of \$600.00. The landlord submitted into evidence a copy of the tenancy agreement confirming that rent was due on the first day of each month. The landlord testified that on October 7, 2011, the tenant had informed her that she intended to vacate the unit. The landlord testified that no formal written notice was never given by the tenant confirming what date that the tenancy would end. However, the tenant vacated the unit on October 24, 2011 and returned the keys to the landlord. The landlord stated that the tenant had paid rent up to October 31, 2012.

The landlord testified that, during October, she immediately commenced advertising the unit to find a tenant and was successful in re-renting the unit effective November 15, 2011. The landlord testified that a loss of one-half of the month's rent of \$600.00 for November was incurred and the landlord is seeking to retain the tenant's security deposit in satisfaction of the claim.

The tenant testified that she felt that she had given the landlord adequate notice to vacate the unit because the date rent was due had been changed from the 1st day of the month to the 7th day. The tenant testified that later on, the landlord had agreed to accept the monthly rent on the 15th day of each month. The tenant stated that her original

intention was to vacate on November 15, 2012, but the landlord had begun showing her unit to prospective tenants in October. The tenant stated that before she vacated the unit on October 24, 2011, she provided the landlord with her written forwarding address with the expectation that her security deposit would be returned. However, the landlord did not return the deposit within 15 days of the end of her tenancy and made an application to keep it on November 16, 2011 seeking to keep the deposit in compensation for the loss of rent for the part of November 2011.

Analysis

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the [*tenant*landlord], to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and verify that a reasonable attempt was made to mitigate the damage or losses incurred.

Section 45 of the Act permits a tenant to 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 that rent is payable under the tenancy agreement. (my emphasis)

I find that the tenant gave some indication that she was ending the tenancy on October 7, 2011 but did not clarify the actual date that she intended to move out. The tenant moved out on October 24, 2011, which was not a full month later but paid rent to the end of October 2011, which was still not a full month after the notification. In any case, although the landlord had accepted late payment of rent during the tenancy, the tenancy agreement specifies that the rent is due on the first day of each month and therefore if the tenant was intending to vacate on October 31, 2011, she would need to give written Notice to move by September 30, 2011.

In addition to the above, section 52 of the Act states that, 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,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find that the tenant's notice did not qualify as a valid Notice as it failed to meet the key criteria under the Act.

Having found that the tenant was in violation of the Act, I find that the landlord had suffered a loss as a result because, despite the landlord's efforts, the unit was not re-rented until mid November and this cost the landlord \$600.00 in potential rent. I find that the landlord's claim meets all elements of the test for damages and the landlord is entitled to \$600.00.

I find that the landlord had held the tenant's \$600.00 security deposit in trust and, after the tenancy ended on October 24, 2011, the landlord made application on November 14, 2011 to keep the deposit for damages.

I find that section 38 of the Act states that, within 15 days after the later of the day the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit or pet damage deposit to the tenant with interest or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

The Act states that the landlord can only retain a deposit if the tenant agrees in writing the landlord can keep the deposit to satisfy a liability or obligation of the tenant, or if, after the end of the tenancy, the director orders that the landlord may retain the amount.

I accept the tenant's evidence that she sent an email communication to the landlord on October 20, 2011 confirming the tenant's forwarding address.

I find that the landlord failed to make an application within 15 days to keep the deposit.

Section 38(6) provides that If a landlord does not comply with the Act by refunding the deposit owed or making application to retain it within 15 days, the landlord may not make a claim against the security deposit or any pet damage deposit, and must pay the

tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that because the landlord did not follow the Act to return, or make application to keep, the funds being held in trust for the tenant, the tenant is therefore entitled to compensation of double the deposit, amounting to \$1,200.00.

Based on the above facts I find that the landlord has established a total monetary claim of \$650.00, comprised of \$600.00 loss of rent and the \$50.00 cost of this application. I order that the landlord retain this amount from the \$1,200.00 security deposit now owed to the tenant, leaving a net amount of \$550.00 in favour of the tenant.

Conclusion

I hereby grant a monetary order to the tenant in the amount of \$550.00. This order must be served on the landlord and , if unpaid, may be filed in 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: February 02, 2012.

Residential Tenancy Branch