



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 applications by the tenant and the landlord. The tenant applied for double recovery of the security and pet deposits. The landlord applied for monetary compensation for unpaid rent and damages. Both the tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to double recovery of the security and pet deposits?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on August 1, 2010. The tenant paid a security deposit of \$371.36 and a pet deposit of \$200 at the outset of the tenancy.

On November 17, 2011, the tenant served the landlord with written notice that she was moving out as of December 16, 2011 due to the lack of heat in the rental unit. In her letter, the tenant indicated that if the landlord did not re-rent the unit by December 15 or 16, 2011, the landlord could keep the security deposit as half a month's rent. In the letter the tenant also requested return of her pet deposit, and provided her forwarding address. The tenant moved out of the rental unit on November 28, 2011.

The landlord did not return the pet or security deposits. On March 15, 2012 the landlord made his application for dispute resolution, but he did not apply to keep the pet or security deposits.

Tenant's Evidence

Near the end of October 2011 the temperature outside was changing, and the rental unit was getting colder. The tenant contacted the landlord and asked why there wasn't any heat. The landlord said he hadn't turned it on yet. In mid-November there still wasn't adequate heat. The landlord told the tenant that he only put the heat on from 6:00 to 8:00. The tenant decided to move out, and moved on November 28, 2011.

The tenant did not renege on an agreement regarding the security deposit. The tenant proposed a solution, but the landlord did not agree.

The tenant acknowledged that she owes for the hydro and gas.

Landlord's Evidence

On October 15, 2011 the landlord received an email from the tenant about the heat. The landlord received a second email from the tenant on October 20th, and the landlord replied and told the tenant that the heat was on. As of October 23, 2011 the heat was always on, and it was programmed for 18 degrees in the evenings. The tenant did not complain again until November 14, 2011, so for three weeks the landlord thought everything was fine. Whenever something was wrong with the rental unit, the landlord fixed it.

The landlord received the tenant's letter on November 17, 2011, which means that the tenant gave the landlord less than 30 days' notice to vacate. The landlord began showing the apartment for re-rental in November 2011 but he did not find a new tenant until the end of January 2012.

The landlord acknowledged that there is an issue with the pet deposit, but the tenant said that the landlord could keep the security deposit.

The landlord has claimed rent for December 2011 in the amount of \$750, as well as \$71.83 for gas and \$30.55 for hydro.

Analysis

Security and Pet Deposits

In regard to the security deposit, I find that the tenant gave the landlord written authorization to retain the security deposit if he was unable to re-rent the unit by mid-December 2011. The tenant is therefore not entitled to double recovery of the security deposit. The landlord continues to hold the base amount of the security deposit in trust, and it will be applied against the landlord's monetary award.

A landlord may only retain a pet deposit if there is damage to the rental unit by a pet, and the landlord makes an application to keep the pet deposit within 15 days of the later of the tenancy ending and the tenant providing a written forwarding address. In this case, the tenant did not give the landlord any authorization to keep the pet deposit, there was no claim of damage done by a pet, and the landlord did not apply to keep the pet deposit within the required time frame. The tenant is therefore entitled to double recovery of the pet deposit, in the amount of \$400.

Landlord's Claim

The tenant acknowledged that she owes for the utilities, and I find that the landlord is entitled to \$102.38 for gas and hydro.

The landlord is also entitled to \$750 in lost revenue for December 2011. A tenant is required to give at least one month's notice to vacate at the latest on the day before rent is due. In this case, the tenant did not give the landlord proper notice to vacate. The tenant did not provide sufficient evidence to show that was entitled to give improper notice because of the perceived heat issue. The landlord began showing the rental unit in November, and I find that the landlord therefore took reasonable steps to reduce his potential lost revenue.

Filing Fees

As the tenant's application was partially successful, I find she is entitled to partial recovery of her filing fee, in the amount of \$25.

As the landlord was successful in his application, I find he is entitled to recovery of his full filing fee, in the amount of \$50.

Conclusion

The landlord is entitled to \$750 for lost revenue for December 2011; \$102.38 hydro and gas costs; and recovery of his \$50 filing fee, for a total of \$902.38. The tenant is entitled to double recovery of the pet deposit, in the amount of \$400; reimbursement of the base

amount of her security deposit, in the amount of \$371.36; and \$25 for the partial filing fee, for a total of \$796.36.

I grant the landlord an order under section 67 for the balance due of \$106.02. 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: April 19, 2012.

Residential Tenancy Branch