



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Tenant MNSD, FF
 Landlord MNR, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for unpaid rent or utilities, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on February 24, 2012, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by personal delivery on February 21, 2012, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Is there unpaid rent or utilities and if so how much?
2. Is the Landlord entitled to unpaid rent and if so how much?
3. Is the Landlord entitled to retain the Tenants' deposits?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

Background and Evidence

This tenancy started on January 1, 2011 as a fixed term tenancy with an expiry date of June 30, 2011 and then the tenancy renewed on a month to month basis. Rent was \$870.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$435.00 on December 13, 2010. The Landlord said a notice of rent increase had been issued to the Tenant for February, 2012 at which time the rent increased to \$907.41.

The Tenant said they moved out of the rental unit on February 2, 2011 and gave the Landlord her forwarding address in writing on February 2, 2012. The Tenant also said there was no move in or move out condition inspection reports completed. The Tenant said that since there were no condition inspection reports done and she did not receive her security deposit within 15 days of the end of the tenancy and after giving the Landlord her forwarding address in writing the Tenant has applied for double the security deposit. The Tenant said she is requesting 2 X \$435.00 or \$870.00 as well as the filing fee for this proceeding of \$50.00.

The Landlord said the Tenant did not give proper notice to end the tenancy as the tenant advised the Landlord on January 27, 2012 that she was moving out February 1, 2012. The Landlord said they tried to minimize their loss of rental by renting the unit out as soon as possible. The Tenant left the unit of February 2, 2012 and the landlord rented the unit of February 7, 2012. As a result the Landlord has applied to retain \$179.00 which represents the rent from February 1, 2012 to February 7, 2012. The Landlord continued to say that the Tenant wrote and signed a note to the Landlord authorizing the Landlord to use her security deposit for unpaid rent for February, 2012. The Tenant said she did write that note, but then later she wrote another letter withdrawing her permission for the Landlord to retain a portion of her security deposit for unpaid rent.

The Landlord continued to say that the Tenant had two cats in the unit that were not authorized under section 2.15 of the tenancy agreement and as a result of the cats the Landlord had to professionally clean the carpets in the unit when the Tenant moved out. The Landlord said the cost of cleaning the carpets was \$75.00.

As well the Landlord said they returned \$181.00 of the Tenant's security deposit on February 9, 2012, but that cheque was return unclaimed so the Landlord reissued the cheque on March 2, 2012. The Landlord said they deducted \$179.00 for unpaid rent for February and \$75.00 for the carpet cleaning from the Tenant's security deposit of \$435.00. The Tenant confirmed receiving the second cheque from the Landlord for \$181.00 and the Tenant said she had not cashed the cheque as of yet.

Analysis

Section 38(4)(a) of the Act says a landlord may retain the tenant's security deposit if the tenant agrees in writing that landlord can retain an amount to pay a liability or obligation of the tenant.

The Tenant did authorize the Landlord in writing to use her security deposit to pay outstanding amounts of the February, 2012 rent. Consequently the Tenant gave up her right to all or part of her security deposit and her application for double the security deposit does not have grounds to be successful. I dismiss the Tenant's application for double the security deposit in the amount of \$870.00 (2 X \$435.00) as the Tenant authorized the Landlord to apply it to unpaid rent for February, 2012. The Tenant's application for the return of double the security deposit in the amount of \$835.00 is dismissed without leave to reapply.

With respect to the Landlord's application to retain a portion of the Tenant's security deposit for unpaid rent in the amount of \$179.00 and for carpet cleaning in the amount of \$75.00, I find the Landlord has proven the Tenant authorized the use of the security deposit for unpaid rent. The Landlord had a loss of rental income from February 1, 2012 to February 7, 2012 in the amount of \$179.00; consequently I award the Landlord the unpaid rent in the amount of \$179.00 and order the Landlord to retain \$179.00 from the Tenant's security deposit. In addition since the Tenant had cats in the rental unit which were not authorized by the tenancy agreement and the Tenant could not prove that she had cleaned the carpets, I find the Landlord has established grounds that the carpets required cleaning after the Tenant moved out. I find for the Landlord and award the Landlord the \$75.00 for carpet cleaning costs which I Order the Landlord to retain from the Tenant's security deposit.

As the Landlord has been successful in this matter I order the Landlord to recover the \$50.00 filing fee for this proceeding from the Tenant. As the Tenant has not been successful in this matter I order the Tenant to bear the \$50.00 filing fee for her application, which she has already paid.



Dispute Resolution Services

Page: 4

Residential Tenancy Branch
Office of Housing and Construction Standards

In conclusion I order the Landlord to retain \$179.00 for unpaid rent for February, 2012, \$75.00 for carpet cleaning and the filing fee of \$50.00 for a total of \$304.00 from the Tenant's security deposit. As the Landlord has already issued a cheque for \$181.00 to the Tenant, but as the Tenant has not cashed the cheque I order the Tenant to return to the Landlord the cheque for \$181.00 and when the Landlord receives the cheque for \$181.00, I order the Landlord to issue a cheque for \$131.00 which represents the amount to be returned to the Tenant from the security deposit.

Conclusion

The Tenant's application is dismissed without leave to reapply.

The Landlord is ordered to retain \$304.00 from the Tenant's security deposit and return \$131.00 to the Tenant.

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*.

Residential Tenancy Branch