



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application. At the outset of the hearing the landlord withdrew her application for a Monetary Order for damage to the unit, site or property and for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

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 provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

Both parties agree that this tenancy started on September 01, 2011 and a new tenancy agreement was entered into on February 01, 2012 for a three month fixed term tenancy until April 30, 2012. Rent for this unit was \$850.00 per month and was due on the last day of each month in advance. The tenant paid a security deposit of \$425.00 on August 15, 2011. Both parties' attended the move in and the move out condition inspection of the property and the tenant gave the landlord her forwarding address in writing on the move out report.

The landlord testifies that on February 11, 2012 the tenant sent the landlord a text message giving notice to end her tenancy. The landlord states she asked the tenant for this notice in writing but the tenant failed to provide written notice. On February 14, 2012 the tenant sent another text message to the landlord informing the landlord that the landlord could start to show the unit.

The landlord testifies that despite not getting written notice from the tenant the landlord advertised the unit on the local Craig's List however the suite was not re-rented until April 15, 2012. The landlord seeks to recover a loss of rental income for March, 2012 to the sum of \$850.00. The landlord seeks an Order to allow the landlord to apply the tenant's security deposit against the unpaid rent.

The tenant agrees she sent the landlord a text message giving notice to end her tenancy. The tenant testifies the landlord sent a text back to the tenant saying that it sounds good and the landlord hopes the tenant found a good place. The tenant states she believed the landlord had given the tenant permission to end the tenancy by saying this and states if she thought the landlord would not be able to re-rent the unit the tenant would not have ended the tenancy at that time.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 45(2) of the Act which states:

A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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.

If the tenant had wanted to get the landlords permission to end the tenancy early the tenant should have requested that the landlord sign a Mutual Agreement to End Tenancy form. As the tenant did not get the landlords written permission and subsequently ended the tenancy before the end of the fixed term, it is my decision that the landlord is entitled to recover a loss of rental income for March, 2012 to the sum of **\$850.00**.

I therefore find the landlord is also entitled to keep the tenants security deposit of **\$425.00** pursuant to s. 38(4)(b) of the *Act*. This sum has been offset against the loss of rental income.

As the landlord has been successful with this reduced claim I find the landlord is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the *Act*.

The landlord will receive a Monetary Order pursuant to s. 67 and 72(1) of the *Act* for the following amount:

Loss of rental income for March, 2012	\$850.00
Filing fee	\$50.00

Less security deposit	(-\$425.00)
Total amount due to the landlord	\$475.00

Conclusion

I HEREBY FIND in favor of the landlord's reduced monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$475.00**. The order must be served on the respondent and is enforceable through the Provincial Court 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: May 08, 2012.

Residential Tenancy Branch