



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution under the *Residential Tenancy Act* (the "*Act*"), seeking a monetary order to keep all or part of a security deposit; for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee.

The tenant and the agent for the landlord appeared by conference call and gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions during the hearing.

The tenant confirmed that she received the landlord's application and evidence package by registered mail.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Matter

During the hearing the landlord made reference to unpaid rent. As the landlord had not indicated unpaid rent on his application, but did indicate money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, his application was amended to include unpaid rent. This does not prejudice the tenant, as the monetary amount sought remains the same; and this clarifies the unpaid rent versus a loss of rent for May 2012. The tenant is required to pay rent for May 2012 unless proper written notice was served on the landlord in accordance with the *Act*.

Issue(s) to be Decided

- Should the landlord be granted a monetary order for unpaid rent?
- Should the landlord recover the filing fee?

Background and Evidence

The landlord provided a copy of the signed tenancy agreement as evidence. The tenancy agreement shows a new tenancy agreement began on September 2, 2011. After a fixed term of two months, the tenancy agreement reverted to a month to month tenancy agreement. Both parties agree that rent in the amount of \$693.45 was due on the first day of the month. A security deposit of \$335.00 was received from the tenant.

The landlord testified that he received the tenant's 1 month written notice on April 1, 2012, via an associate of the tenant, indicating that she would be vacating at the end of April 2012. The tenant testified that she had instructed her associate to deliver her notice on her behalf before the end of March 2012, due to medical reasons that prevented her from providing the notice herself. Both parties agree that the associate did not deliver the tenant's 1 month written notice to the landlord until April 1, 2012.

The tenant testified that she returned the keys to the landlord on April 27, 2012 when she vacated the rental unit. The landlord testified that he attempted to rent the rental unit for May 2012 by placing an ad in the newspaper, however, was unable to rent the rental unit until June 2012.

The landlord provided a copy of a letter dated April 30, 2012. In the letter, the tenant provided her forwarding address for the purposes of the return of her security deposit.

The landlord testified that he filed his application in accordance with the *Act* to retain the security deposit and for loss of rent for May 2012. The landlord submitted a registered mail receipt with tracking number dated May 9, 2012, as documentary evidence prior to the hearing. The landlord testified that he included the Notice of Hearing and evidence package in the registered mail that was addressed to the forwarding address of the tenant.

The landlord provided the tenant's 1 month written notice; tenant's forwarding address letter; rent deposit ledger; and interest deposit form as evidence.

Analysis

Based on the documentary evidence and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 45 of the *Act* states:

Tenant's notice

45 (1) A tenant may 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, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

As the landlord was not provided the tenant's 1 month written notice until April 1, 2012, the tenant is also responsible for rent for May 2012 under section 45 of the *Act*. Although the tenant testified that it was her associate who did not provide the written notice on time as agreed, I find that it is ultimately the responsibility of the tenant to ensure the landlord is served in accordance with section 45 the *Act*. The landlord testified that he attempted to rent the rental unit for May 2012 by placing an ad in the newspaper but was unable to rent the rental unit until June 2012. I find that the landlord attempted to mitigate his loss pursuant to section 7 of the *Act*.

Section 38 of the *Act* states:

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

I find that the landlord applied for dispute resolution claiming against the security deposit on May 9, 2012, within 15 days pursuant to section 38 of the *Act*.

The landlord is holding a security deposit including \$0.00 in interest in the sum of \$335.00. The landlord has succeeded with their application; therefore I award recovery

of the **\$50.00** filing fee. The total monetary amount of **\$743.45** consists of \$693.45 in unpaid rent for May 2012 and recovery of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a total monetary claim of **\$743.45**. I order that the landlord retain the deposit and interest of **\$335.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$408.45**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: June 19, 2012

Residential Tenancy Branch