

DECISION

Dispute Codes MNSD, FF, MNDC

Introduction

There are applications filed by both parties. The Landlord has filed an application to keep all of the security deposit and recovery of the filing fee. The Tenant has filed an application for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Tenant has submitted 1 documentary evidence package which the Landlord has acknowledged receiving. The Landlord has not submitted any documentary evidence. As both parties have attended and have acknowledged receiving the submitted evidence, I find that both parties have been properly served as deemed under the Act.

Both parties have made reference in their disputes details to two other decisions made by the Residential Tenancy Branch. The Landlord has made reference to Residential Tenancy Branch File No. XXXXXX for a hearing completed on April 3, 2012. The Dispute Resolution Officer in that hearing found, "It is my finding that the Residential Tenancy Act has no jurisdiction over this matter, because the applicant testified that he rented the house and property to the respondent to run a farm. The Residential Tenancy Act only has jurisdiction over residential tenancies and not commercial ventures, and since this property was rented to the respondent to run a farm, this is considered a commercial rental." The Application was declined for no jurisdiction over these matters. The Tenant has made reference to RTB File No. YYYYYYY for a hearing completed on March 23, 2012. In this decision the Dispute Resolution Officer accepted jurisdiction as both parties attended the hearing for the Tenant's Application to cancel a notice to end tenancy for unpaid rent, to dispute an additional rent increase and a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement. In that hearing the Dispute Resolution Officer found that a 2 month notice to end tenancy for Landlord's use of property was served and that the Tenant was entitled to an amount equivalent to one month's rent. The Tenant was able to withhold this amount from the last months rent for March 2012. The Landlord was granted an order of possession and the remaining portions of the Tenant's claims were dismissed.

I find that I have jurisdiction in these applications. The Landlord served the Tenant with both a 2 month notice to end tenancy for Landlord's use of property and a 10 day notice to end tenancy for unpaid rent. Both parties have given testimony that a verbal tenancy

agreement exists and that a security deposit was paid as well as both parties have conceded that jurisdiction exists for the Residential Tenancy Branch by filing their disputes.

Issue(s) to be Decided

Is the Landlord entitled to retain the security deposit?

Is the Tenant entitled to the return of double the security deposit?

Background, Evidence and Analysis

Both parties agree that a verbal tenancy agreement existed and that a security deposit of \$1,450.00 was paid in May of 2010. Both parties also agree that the Tenancy ended on March 31, 2012 as shown on the submitted copy of the condition inspection report. This report also confirms that the Tenant provided his forwarding address in writing on that date.

Section 38(1) of the Act provides that within 15 days after the later of the date the tenancy ends and the date the landlord receives the tenant's forwarding address in writing, the landlord must either repay the security deposit to the tenant or file an application for dispute resolution claiming against the deposit. In the present case, the landlord has made application for dispute resolution on April 11, 2012, 11 days after the end of tenancy and when the Landlord. On this basis, the Tenant's claim for the return of double the security deposit has not been established. This portion the Tenant's application is dismissed.

The Landlord has made an application to retain the security deposit. The Landlord states that "Tenant did not pay rent and held back for the repairs that he did. He won lots of free rent and he has taken down all of the fencing that he was paid for by not paying the rent. The Tenant disputes this stating that the condition inspection report

was completed by both parties and signed off. The Landlord has confirmed that the condition inspection report for the move-out was completed by both parties even though the Landlord did not sign it. I find based on a lack of sufficient evidence that the Landlord has not established a claim to retain the security deposit. On this basis, I order that the Landlord return the \$1,450.00 security deposit to the Tenant. The Tenant is also entitled to recovery of the \$50.00 filing fee. The Tenant is granted a monetary order under section 67 for the balance due of \$1,500.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord's application is dismissed.
The Tenant is granted a monetary order for \$1,500.00.

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: June 08, 2012.

Residential Tenancy Branch