



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNSD, FF
 Tenants: MNSD, FF

Introduction

This hearing dealt with the cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants. The tenants had arranged for a witness to be available, however, it was determined during the hearing there was no need to hear her testimony.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided are whether the tenants are entitled to a monetary order for double the amount of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agreed the tenancy began in September 2011 for a monthly rent of \$1,400.00 due on the 1st of each month with a security deposit of \$750.00 paid. The parties also agree the tenants vacated the rental unit on or before February 29, 2012. There was no written tenancy agreement.

The landlord testified that he believed the tenancy was for a fixed term that ended April 30, 2012. The tenants testified that while they had indicated that they would likely be staying in the unit until April 30, 2012 they did not commit to a fixed term tenancy until that time.

The parties agree tenant TG provided the landlord, in January 2012, with notice of his intention to end the tenancy at the end of February, 2012. The landlord understood that tenant MH would be staying until the end of April 2012. Tenant MH testified that he

provided the landlord's wife with notice of his intention to leave the unit at the end of February 2012 about a week after tenant TG did, now in February 2012.

The parties also agree that the tenants provided their forwarding address to the landlord on or before April 19, 2012.

The landlord seeks compensation for rent for the months of March and April 2012 in the amount of \$700.00 per month only as he states he reduced the rent amount by $\frac{1}{2}$ when tenant TG moved out. Tenant MH states he was not aware the landlord would have reduced the rent.

The landlord also seeks to retain the full security deposit because he states the tenants did not clean the rental unit prior to vacating the unit. The tenants testified that they did clean the rental unit. Neither party provided any evidence of the condition of the rental unit at the end of the tenancy.

Analysis

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

As the landlord acknowledged that the forwarding was provided on or before April 19, 2012 I find the latest the landlord could return the security deposit or file an Application to claim against the deposit to be compliant with Section 38(1) was May 4, 2012. The landlord submitted his Application on July 16, 2012.

As such, I find the landlord was not compliant with Section 38(1) and the tenants are entitled to return of double the amount of the security deposit.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

From the testimony provided I find that in the absence of a written tenancy agreement and with the parties having different understandings of the type of tenancy (i.e. fixed term or month to month) the burden is on the landlord to establish this was a fixed term tenancy.

As the landlord has provided no corroborating evidence I find the landlord has failed to establish this tenancy was for a fixed term. As a result, I find the landlord is not entitled to any rent from the tenants for the month of April 2012.

Residential Tenancy Policy Guideline 13 states that tenants are jointly responsible for meeting the terms of the agreement and that when one tenant provides the landlord with notice to end the tenancy that all co-tenants are bound by that notice and normally the tenancy will end in accordance with the notice.

However, in the case before, I am satisfied that the tenants, at least initially, implied the tenant MH was intending to remain in the rental unit and that his notice was not given until sometime in February. As I have determined there was not a fixed term tenancy then the rules regarding ending a periodic (month to month) must apply.

Section 45 states a tenant may end a month to month tenancy by giving the landlord a notice to end a tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

As such, I find the earliest tenant MH could end the tenancy would have been March 31, 2012. Therefore I find the tenants owe the landlord rent for the month of March 31, 2012. As there was no agreement between the parties that rent would be reduced, I also find the landlord cannot unilaterally change the amount of rent and as such I find rent for the month of March was \$1,400.00.

As to the landlord's claim for cleaning, because the landlord has provided no evidence of the condition of the rental unit or to establish the value of cleaning the rental unit, I dismiss this portion of the landlord's claim.

Conclusion

Based on the above, I find the tenants are entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$100.00** comprised of \$1,500.00 double the security deposit less \$1,400.00 for rent owed.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties were, at least partially, successful in their Applications I dismiss both parties requests to recover the filing fees for their respective Applications.

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: July 27, 2012.

Residential Tenancy Branch