



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MND, MNDC, MNR, FF.

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for the cost of repairs, unpaid rent and the filing fee. The tenant applied for a monetary order for the return of double the security and pet deposits, for the cost of alarm monitoring and for the filing fee for this application and a prior application. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Prior to this hearing, a hearing was conducted on May 08, 2012 to address the tenant's application for the return of double the security and pet deposits and for the recovery of the filing fee. At that hearing, the tenant had called in from Iran and due to problems with the phone connection; his application was dismissed with leave to reapply.

This hearing was no different other than it dealt with the applications of both parties. On June 08, 2012, the landlord made her application for a monetary order. Again, the tenant called in from Iran and was assisted by an interpreter. It was impossible to understand the interpreter due to the echo on the phone line and she made four attempts to sign off and call back in. Eventually, the interpreter could be heard clearly, but there was a delayed feedback of my voice and that of the landlord. It was extremely difficult to understand the testimony of the landlord and therefore I was unable to gather accurate evidence from both parties.

I attempted with difficulty due to the feedback on the phone line, to negotiate a settlement between the two parties as provided by section 63 of the *Residential Tenancy Act*, but the landlord refused the opportunity to do so. Since I was unable to discuss the details of the monetary claims of both parties with regard to damages and the cost of alarm monitoring, I dismiss these portions of their applications with leave to reapply.

Accordingly, this hearing only dealt with the tenant's application for the return of double the deposits, for the landlord's claim for unpaid rent and for the recovery of the filing fees.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent? Is the tenant entitled to the return of double the security and pet deposits? Are both parties entitled to the recovery of their filing fees?

Background and Evidence

The tenancy started on September 01, 2011 and ended on January 27, 2012. The monthly rent was \$2,600.00 due on the first of the month. The tenant paid a security deposit of \$1,300.00 and a pet deposit of \$1,300.00.

The exact date of when the tenant gave written notice to end the tenancy was unclear and disputed by both parties. However both parties agreed that the tenant gave notice to end the tenancy after the first day of January. The tenant stated that since he gave notice prior to January 15, 2012, he paid rent in the amount of \$1,300.00 for February, which covered rent up to February 15, 2012. He stated that the landlord accepted this amount as rent for February and filed a copy of the cashed cheque as proof of payment.

On February 16, 2012, the tenant wrote a letter to the landlord asking for the return of his deposits and provided the landlord with a forwarding address. The tenant stated that he did not receive his deposit and therefore on May 14, 2012, he filed an application for the return of double the deposits. The landlord argued that the unit was left in a damaged condition and that the tenant owed rent for half of February and therefore the landlord kept the deposits.

As mentioned above, it was impossible to discuss the details of the landlord's claim starting with whether move in and move out inspections were conducted and if so whether a report was generated. I attempted to discuss the monetary claims of both parties, with regard to damages and the cost of alarm monitoring, but the parties disputed every aspect of each other's testimony and were not willing to negotiate a settlement. Combined with the delayed feedback on the phone line, it was impossible to continue attempts to discuss their monetary claims for damages and alarm monitoring.

Analysis

Landlord's application:

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the 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.

Based on the testimony of both parties, I find that the tenant did not give the landlord sufficient notice to end the tenancy on January 27, 2012, and is therefore liable for rent for the month of February. The tenant paid \$1,300.00 towards rent for February and accordingly the landlord is entitled to the balance of rent in the amount of **\$1,300.00**.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security and pet deposits or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing.

Based on the sworn testimony of both parties, I find that the landlord failed to repay the deposits or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and is therefore liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposits. The landlord currently holds a security deposit of \$1,300.00 and a pet deposit of \$1,300.00 and is obligated under section 38 to return double this amount plus accrued interest on the base amount (\$0.00). Therefore, the tenant has established a claim for **\$5,400.00**.

Conclusion

Overall, the landlord has established a claim of **\$1,300.00** and the tenant has established a claim for **\$5,400.00**. I will use the offsetting provisions of section 72 of the Act to offset the landlord's claim against the tenant's claim and I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$4,100.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Both parties must bear the cost of filing their applications. The tenant's claim for the filing fee for a previous application is dismissed. The landlord's claim for damages and the tenant's claim for the cost of alarm monitoring are both dismissed with leave to reapply.

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 12, 2012.

Residential Tenancy Branch