



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on June 13, 2011 for:

1. An Order for return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 21, 2012 for:

1. A Monetary Order for unpaid rent – Section 67;
2. A Monetary Order for compensation – Section 67;
3. An order to retain all or part of the security deposit; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amount claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The following are undisputed facts: The tenancy began on June 1, 2011. Rent in the amount of \$1,150.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the

amount of \$575.00 and a pet deposit in the amount of \$575.00. The Tenant failed to pay rent for June 2012 and on June 7, 2012 the Landlord served the Tenant with a 10 day Notice to end Tenancy for unpaid rent (the "Notice"). The effective move-out date of the Notice is June 17, 2012. The Tenant did not file an application to dispute the Notice and moved out of the unit on June 15, 2012. Neither a move-in or move-out inspection was conducted. The Tenant provided its forwarding address on June 17, 2012.

The Tenant states that the June 2012 rent was unpaid as the Landlord was out of town until June 21, 2012 and it was the Tenant's intention to pay the rent when the Landlord returned. The Tenant states that the rent is always paid at the convenience of the Landlord who comes to pick the rent cheques. The Tenant states that the rent cheque was not provided to a third party who arrived to collect the cheque as the Tenant did not know this person. The Tenant states that as she was wrongly evicted and had to move out of the unit and pay a portion of June 2012 rent elsewhere, that the Landlord is not entitled to any rent for June 2012.

The Landlord states that the Tenant has been late paying rent and that the Landlord would pick up the rent cheques late in order to give the Tenant some leniency. The Landlord states that when the Tenant did not pay rent in June 2012, the Landlord repeatedly tried to call the Tenant to tell her to pay the rent to his wife who is also a landlord on the tenancy agreement. The Landlord states that as the Tenant had indicated that she was going to move out the Landlord was concerned that she may not pay any rent at all for June 2012.

The Landlord states that the Tenant left a stain on the carpet and did not clean the oven. The Landlord states that he carried out the labour to clean the carpet and the oven and claims \$70.00 in labour for the carpet and \$45.00 in labour for the oven. The Tenant states that she cleaned the carpet and the oven at move-out. The Tenant provided a cd as evidence and the Tenant states that the cd contains photos of the unit clean at move-out.

Analysis

Section 23 of the Act requires that upon the start of a tenancy, a landlord and tenant must together inspect the condition of a rental unit on the possession date for that unit, or on another mutually agreed date. Section 24(2) of the Act further provides that where a Landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished.

Section 38 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 repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

Based on the undisputed evidence of the Parties, I find that no move-in inspection was conducted or completed and that the Landlord's right to claim against the security deposit has therefore been extinguished. Although the Landlord made an application for dispute resolution, as the right to claim against the security deposit was extinguished before move-out, I find that the only option left in relation to the security deposit was to return the deposit to the Tenant within 15 days of receiving the forwarding address. As the Landlord failed to return the security deposit, I find that the Landlord must pay the Tenant double the combined pet and security deposit plus zero interest in the mount of **\$2,300.00**. As the Tenant's application has been successful, I find that the Tenant is entitled to recovery of the \$50.00 filing fee for a total entitlement of **\$2,350.00**.

Section 26 of the Act provides that a tenant must pay rent when it is due. Based on the undisputed evidence of the Parties, I find that the Tenant failed to pay June 2012 rent and that the Landlord is therefore entitled to **\$1,150.00**.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Given the evidence of the Tenant that the unit was cleaned and considering the photos provided by the Tenant, I find that the Landlord has failed to establish on a balance of probabilities that the Tenant left the unit unclean and I therefore dismiss this part of the Landlord's claim. As the Landlord's application has met with limited success, I decline to award recovery of the filing fee to the Landlord.

Subtracting the Landlord's entitlement of \$1,150.00 off the Tenant's entitlement of \$2,350.00 leaves **\$1,200.00** owing to the Tenant from the Landlord.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for the amount of **\$1,200.00**. If necessary, this order may be filed in the Small Claims Court and enforced 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: August 20, 2012.

Residential Tenancy Branch