



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent, the tenant's agent and the tenant joined the hearing 15 minutes after the start of the hearing.

The tenant's agent requested an adjournment because the tenant had just retained him on August 1, 2012 and he has not been able to adequately prepare for the hearing. The agent testified that the tenant did know about him until just last week. The hearing package was served to the tenant on June 7, 2012 by registered mail. The tenant's agent provided no other explanation as to why the tenant took so long to find an agent to represent her.

Residential Tenancy Branch Rule of Procedure 6.4 sets out the criteria I must consider for granting an adjournment as follows:

1. The oral and written submissions of the parties;
2. Whether the purpose for which the adjournment is sought will contribute to the resolution of the matter;
3. Whether the adjournment is required to provide a fair opportunity for a party to be heard;
4. The degree to which the need for the adjournment arises out of the intentional actions or neglect of the party seeking adjournment; and
5. The possible prejudice to each party.

From these guidelines, I find that since the tenant has been aware of this hearing since early in June 2012 the need for this adjournment arises, at least in part, out of neglect by the tenant respondent and that the adjournment is not required to provide a fair opportunity for the tenant to be heard. I therefore dismiss the tenant's adjournment request.

The tenant's agent submitted that the second named respondent never did sign the tenancy agreement; rather that the first tenant named signed the second name respondent signature on the tenancy agreement and therefore the second named respondent should not be named on the claim.

Residential Tenancy Policy Guideline 13 states that co-tenants are two or more tenants who rent the same property under the same tenancy agreement. It goes on to say that co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. As such the landlord may recover any debt resulting from the tenancy from all or any one of the tenants.

Therefore, with the landlord's agreement and in the absence of making any findings on whether or not the second named respondent was a tenant or not, I amend the landlord's Application to exclude the second named respondent.

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 tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on September 16, 2011 for a month to month tenancy beginning on October 1, 2011 for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid on September 16, 2011.

The parties agree the tenancy ended on May 16, 2012, after the landlord had served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent on May 5, 2012 with an effective vacancy date of May 17, 2012 citing the tenant had failed to pay rent in the amount of \$975.00 due on May 1, 2012.

The parties also agree the tenant returned to the unit on May 25, 2012 at which time she initialled and signed a move-in/move-out inspection report stating that she agreed the landlord could withhold \$75.00 for NSF charges and \$95.00 for carpet cleaning from the security deposit held.

The tenant's agent submits that the landlord should not be allowed to retain these amounts because the tenant was not sure of her rights when she signed the agreement saying the landlord could retain these amounts. The tenant's agent further submits that there were NSF charges should only total \$50.00 and the tenant should not be charged at all for carpet cleaning, as it is wear and tear.

As the tenant did not agree for the landlord to withhold any further amounts from the security deposit held and the tenant did not pay rent at all for the month of May 2012 the landlord seeks rent for that month and to apply the balance of the security deposit held of \$280.00 against the rent owed for a balance owing of \$620.00.

The tenant submits that she should not have to pay rent at all because she did not live in the rental unit for the full month. The tenant acknowledged that she was living in the rental unit on May 1, 2012; that at no time did she give the landlord a notice of her intention to end the tenancy; and that she moved out in compliance with the landlord's 10 Day Notice to End Tenancy for Unpaid Rent.

The tenant's agent submits that the landlord had the tenants address at the end of the tenancy and should have either returned the deposit in full or filed an Application for Dispute Resolution within 15 days to claim against the deposit. He states that since the landlord failed to do this the tenant is entitled to double the deposit.

The landlord testified the tenant provided her forwarding address in writing on May 25, 2012 – the day of the move out inspection, which was the same day the tenant returned the rental unit keys to the landlord.

Analysis

In relation to the tenant's assertions that the landlord should not be entitled to retain NSF fees and carpet cleaning charges from the security deposit, I note that these issues are not a part of the landlord's claim. Further, as the tenant signed agreeing to allow the landlord to retain these amounts the tenant entered into a contract with the landlord and it was her responsibility to know what she was signing for and what her rights may or may not have been.

Section 26 of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement. As the tenant still had possession of the rental unit on May 1, 2012 and since the tenancy agreement stipulates that rent was due on the 1st of the month I find the tenant still owes the landlord rent for the month of May 2012.

There is nothing in the *Act* that allows the tenant to disregard any rent due to the landlord if the landlord issues a 10 Day Notice to End Tenancy for Unpaid Rent and the tenant vacates the rental unit. As such, I find that despite the tenant's assertion that she shouldn't have to pay rent since she didn't live in the unit the whole month, I find the tenant owes the landlord rent for May 2012.

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 to the tenant's assertion that the tenant is entitled to double the amount of the security deposit, I find that since the tenant did not return the keys to the rental unit or provide the landlord with her forwarding address until May 25, 2012 the landlord had until June 9, 2012 to file her Application for Dispute Resolution claiming against the deposit.

Therefore, I find the landlord has complied with Section 38(1) by filing her Application for Dispute Resolution on June 7, 2012 and the tenant is not entitled to double the amount of the security deposit.

Conclusion

For the reasons above, I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$950.00** comprised of \$900.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$280.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$670.00**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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 07, 2012.

Residential Tenancy Branch