



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNR, MNDC, MNSD, 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 loss of income, liquidated damages, and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant applied for the return of double the security deposit and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Did the landlord suffer a loss of income when the tenant broke the fixed term lease? Is the landlord entitled to a monetary order for liquidated damages, loss of income and the filing fee? Did the tenant provide the landlord with her forwarding address in writing? Did the tenant give the landlord adequate notice to end the tenancy? Is the tenant entitled to the return of double her security deposit and to the recovery of the filing fee?

Background and Evidence

The parties entered into a second fixed term tenancy on January 01, 2012 with an end date of December 31, 2012. The monthly rent is \$1,849.00 due on the first of each month. The landlord filed a copy of the tenancy agreement.

A term of this agreement entitled “**Termination of Lease**” states as follows:

In the event that the tenant terminates the lease prior to the fixed length of time set out above, the tenant(s) agrees to give two full calendar months notice in writing to the landlord and pay the sum of \$750. Not as a penalty but as liquidated damages. This sum of money will cover the cost of advertising and the administrative fees paid to facilitate the securing of a new tenant for the above vacated premises by the named tenant herein. This amount will be retained by the landlord in accordance of the landlord and tenant Act and this lease. In the event the tenant does not pay the amount stipulated herein, the landlord will deduct the said amount form the security deposit and the last month rent.

The tenants are a couple in their eighties and in poor health. In her written submission the tenant stated that in March 2012, her vehicle was involved in an accident in the parking lot of the building. This incident caused the tenant a great deal of stress and she decided to move out of the rental unit. She stated that at the initial signing of the tenancy agreement, the landlord told her that after the first fixed term, she could end a subsequent fixed term early, without penalty.

The tenant stated that on April 26, 2012, she gave the landlord a hand written notice to end the tenancy effective June 01, 2012. The landlord did not accept the notice and asked her to rewrite the notice, ending the tenancy on June 30, 2012 and agreeing to forfeit her security deposit. The tenant did so and also stated that she told the landlord where she was moving to which was a block away from this dispute rental unit. The tenant moved out on May 17, 2012.

The landlord denied the above. He stated that he did not tell the tenant that a subsequent fixed term could be terminated early, without penalty. He also stated that he received only one written notice, a copy of which he filed into evidence and that the tenant did not give him her forwarding address in writing.

The landlord stated that he advertised the availability of the unit on the outside of the building and on line, as soon as the tenant gave notice. However, the landlord did not find a tenant for June 01. He stated that a tenant moved in at the end of June.

The landlord is claiming \$750.00 as liquidated damages plus \$1,849.00 for loss of income for the month of June. The tenant is claiming the return of double the security deposit. Both parties are claiming the recovery of the filing fee.

Analysis

Landlord's application:

The landlord has claimed loss of revenue for June 2012 as well as liquidated damages of \$750.00 pursuant to a clause in the tenancy agreement. I find that the Tenancy Agreement provides the landlord with two options: claim the \$750.00 in liquidated damages thereby ending the contract or treat the contract as continuing, in which case the obligations under the contract (such as payment of rent) would continue.

I find that the landlord cannot do both. He must either choose to claim \$750 in which case he has ended the contract or he must not claim the \$750.00 and keep the contract alive.

As the landlord's own tenancy agreement creates this ambiguity I will resolve the matter in favour of the tenant and allow the landlord's claim for the \$750.00 rather than for loss of rental income of \$1,849.00.

Tenant's application:

The tenant has applied for the return of double the security deposit. Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenant did not provide her forwarding address in writing. I accept that she informed the landlord verbally as she was moving one block away and the landlord located her to serve her the notice of hearing, but s.38 requires the tenant to provide the landlord with her forwarding address in writing. Since the tenant did not do so, I find that the tenant is not entitled to the return of double the security deposit but is entitled to the return of the base amount of the security deposit.

Since both parties have not proven their entire claim, I find that each must bear the cost of filing their own application. Overall the landlord has established a claim of \$750.00.

I order that the landlord retain the security deposit of \$750.00 in full satisfaction of his claim.

Conclusion

The landlord may retain the security deposit. The balance of his claim is dismissed. The tenant's claim is dismissed in its entirety.

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: September 11, 2012.

Residential Tenancy Branch