



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF, MNDC, OLC

Introduction

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for an order for return of double her security deposit, a request for the landlord to comply with the tenancy agreement, and a request for recovery of the \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$2390.00, a request for recovery of the \$50.00 filing fee, and a request to retain the full security deposit of \$597.50 towards the claim.

Background and Evidence

The tenant testified that:

- She signed a fixed term tenancy agreement with an end the tenancy date of May 31, 2012.
- In that tenancy agreement however there is a clause that states:
 - "Upon the greater of 60 days notice and any notice required under the Act, the Tenant may terminate the tenancy under this Lease without cause or reason."

- She gave her Notice to End Tenancy in writing to the landlords on February 15, 2012, and therefore she believes she is only liable for rent to the end of April 2012.
- She has paid the full March 2012 rent, and is willing to allow the landlord to keep the full security deposit towards the April 2012 rent and she will pay the difference.
- The landlord however is asking for rent to the end of May 2012 and she does not believe this is justified.
- She is therefore requesting an order that the landlords comply with the tenancy agreement and recognize the 60 day notice clause.
- When she moved out of the rental unit she gave the landlords a forwarding address in writing on a Post-it note that was attached to the move out inspection report.
- She is therefore also requesting an order for double her security deposit, because the landlords did not return the deposit within the 15 day time period.

The landlords testified that:

- They did not receive a forwarding address in writing from the tenant until they received her application for dispute resolution.
- There was no Post-it note with a forwarding address attached to the move out inspection report.
- They believe that the tenant should be liable for rent right to the end of the fixed term, as they were unable to re-rent the unit even though they attempted to do so.
- They believe that the clause in the tenancy agreement that has been quoted by the tenant refers to notice required once the fixed term has expired, and did not give the tenant the right to end the tenancy prior to the end of the fixed term.
- They are therefore requesting an order for both the April 2012 rent, and that May 2012 rent for a total of \$2390.00.

Analysis

It is my finding that the tenant has not met the burden of proving that a forwarding address in writing was given to the landlords, and therefore I will not be ordering the return of double the security deposit.

It is also my finding however that the clause in the tenancy agreement that states "Upon the greater of 60 days notice and any notice required under the Act, the Tenant may terminate the tenancy under this Lease without cause or reason", does allow the tenant

to end this tenancy prior to the end of the fixed term, as long as at least 60 days notice has been given.

Therefore in this case since notice was given on February 15, 2012, the tenant is only liable for rent to the end of April 2012.

I therefore allow the landlords claim for April 2012 rent, however I will not allow the claim for may 2012 rent.

Further since I have allowed a portion of the landlords claim I also order recovery of the landlords filing fee.

Conclusion

Tenant's application

The tenant's monetary application is dismissed in full without leave to reapply.

Landlord's application

I have allowed \$1245.00 of the landlords claim, and I therefore order that the landlords may retain the full security deposit of \$597.50, and have issued a monetary order in the amount of \$647.50

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: October 15, 2012.

Residential Tenancy Branch