



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF,

Introduction

A substantial amount of 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 a monetary order for \$2800.00 and a request for recovery of her \$50.00 filing fee.

The landlord's application is a request for a monetary order for \$6,000.00 and a request for recovery of their \$100.00 filing fee.

Tenant's application

Background and Evidence

The tenant testified that:

- She is requesting an order for double her security deposit, because the landlords have not returned any of the deposit and have stated that they are deducting \$150.00 from the deposit without her permission.
- She is also requesting an order for return of approximately \$1000.00 in utilities that she believes she has overpaid.

- In the tenancy agreement she agreed to pay \$200.00 per month towards utilities however the landlords agreed that once the actual amount of utilities were determined they would re-refunded any difference however the landlords have refused to do so, or even provide copies of the amounts of the utilities.

The landlord testified that:

- They have not applied for dispute resolution to keep any of the tenant's security deposit nor has the tenant given them any written permission to keep any of the security deposit.
- They did however inform the tenant that they would be keeping \$150.00 of the security deposit, and on September 15, 2012 they mailed the tenant a cheque for the remaining \$750.00.
- There was never any agreement to return any utilities to the tenant.
- The tenancy agreement states that the rent is \$2000.00 per month which includes \$200.00 for utilities.
- It was the tenant that sent them an e-mail requesting the return of some of the utilities however this was not something that was ever agreed to.

Analysis

Security deposit

The Residential Tenancy Act states that, if the landlord does not either return the full security deposit, get written permission from the tenants to keep the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants fall security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past. The tenants have not given the landlord any written permission to keep the security deposit.

This tenancy ended on September 1, 2012 and the landlord has admitted that they had a forwarding address in writing by September 1, 2012 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a security deposit of \$900.00 and therefore the landlord must pay \$1800.00.

The landlord claims to have already sent a cheque for \$750.00; however to date the tenant has not received that cheque. Therefore at the hearing the landlord stated they will put a stop payment on that cheque.

Utilities

It is my decision that the tenant is bound by the tenancy agreement with regards to utilities, and there is nothing in the tenancy agreement that states that any of the utility costs will be refunded to the tenant.

The tenant has pointed to an e-mail dated October 28, 2011 where there is a discussion about utilities and whether they should be put in her name or whether she would pay \$200.00 a month and the landlord would keep track of the total amount owing, however the final tenancy agreement makes no mention of any amount to be returned, it only states that the rent is \$2000.00 a month, including \$200.00 for utilities.

Is my finding that the tenant has not met the burden of proving that there was ever an agreement to return any of the utilities, as it is just her word against that of the landlords.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

I therefore deny the tenants claim for the return of any money for utilities.

I will however order recovery of the \$50.00 filing fee.

Therefore the total amount of the tenant's claim that I have allowed is \$1850.00.

Landlord's application

Background and Evidence

The landlords testified that:

- The tenant signed a 12 month tenancy agreement that started on December 1, 2011 ending on December 1, 2012.
- The tenant breached that tenancy agreement and vacated the rental unit on September 1, 2012.
- They attempted to re-rent the unit however they were unable to re-rent it in the months of September 2012 in October 2012 however they subsequently re-rented the unit for November 1, 2012.
- They had originally been asking for three months lost rental revenue, however since it has been re-rented they are now asking for two months lost rental revenue for a total of \$4000.00.
- They also requesting recovery of their \$100.00 filing fee.

The tenant testified that:

- The landlords knew right from the start that she only wanted to rent the unit to the end of August 2012.
- She did sign a fixed term tenancy agreement that states that the end of the tenancy is December 1, 2012, however at the time the landlords told her that she could move at the end of August 2012, but if she wanted to stay she could stay to December 1, 2012.
- She had asked about moving out earlier than September 1, 2012; however the landlords wanted her to stay until the end of August and therefore she did.
- Therefore since the landlords knew she was moving at the end of August 2012 and even told her they wanted her to stay to the end of August 2012 she does not believe she should have to pay for any rent after that date.

In response to the tenant's testimony the landlords testified that:

- It was not their choice for the tenant to vacate at the end of August 2012.
- They did request that she stay at the least until the end of August 2012, but that did not mean that they were releasing her from her obligation to under the lease.
- The tenant chose to vacate early so what choice did they have but to allow her to do so, they could not force her to stay.

Analysis

It is my finding that tenant is bound by the terms of this tenancy agreement.

The tenancy agreement states that this tenancy runs until December 1, 2012 and therefore if the tenant chooses to leave before that date, she is still liable for any lost rental revenue that occurs as a result of that choice.

I do not agree with the tenant's interpretation of the e-mail where the landlord states that she would appreciate it if the tenant stays until August 31; this e-mail says nothing about releasing the tenant from her obligations for the last three months of the lease.

I therefore allow the landlords claim for lost rental revenue for the months of September 2012 and October 2012 totaling \$4000.00.

I also order recovery of the landlord's \$100.00 filing fee. I have allowed the full \$100.00 amount, because at the time that the landlords applied they had no way of knowing that the rental unit would re-rent for the month of November 2012.

Therefore the total amount of the landlord's claim that I have allowed is \$4100.00

Conclusion

I have allowed \$1850.00 of the tenants claim, and I have allowed \$4100.00 of the landlords claim. I have therefore set off the \$1850.00 against the \$4100.00 and have issued an order for the tenant to pay \$2250.00 to the landlords.

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: November 05, 2012.

Residential Tenancy Branch