



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the tenant for an order compelling the landlord to return double her security deposit and a cross-application by the landlord for a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Is the tenant entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on May 12, 2012 at which time the tenant paid a \$265.00 security deposit. They further agreed that \$530.00 in rent was due on the 12th day of each month and that on or about June 18, the tenant gave notice that she was ending the tenancy in July. They further agreed that the tenant provided her forwarding address in writing to the landlord on or about August 9.

The tenant testified that she spoke with the landlord's wife, who first told her that her notice was effective to tenancy on July 31 and then told her that she had to vacate the unit on July 12. The tenant testified that she vacated the unit on July 12.

The landlord testified that the tenant surrendered the keys to the unit on July 15 and denied that his wife had told the tenant to vacate on July 12. The landlord testified that he advertised the unit and was unable to find a new tenant until October. The landlord filed his application for dispute resolution on November 9.

The tenant seeks the return of double her security deposit and the landlord seeks to recover lost income for the period from July 12 – August 11.

Analysis

Section 38(1) of the Act requires the landlord to either make a claim against the security deposit or return it in full within 15 days of the later of the date the tenancy ends and the date he receives the forwarding address in writing. The landlord waited almost 3 months after receiving the forwarding address in writing to file his claim and I find that pursuant to section 38(6), he is liable to the tenant for double the amount of the security deposit. I award the tenant \$530.00.

Section 45(1) of the Act requires the tenant to give one full month's written notice to end a periodic tenancy, giving notice no later than the day before rent is due in order to end the tenancy at the end of the following rental period. Although in the tenant's notice she advised that she expected her tenancy to end on July 18, section 53 of the Act operates to automatically change the effective date of the notice. In this case, rent was due on the 12th day of each month and because the tenant gave her notice on June 18, it could not have taken effect until August 11, which was the end of the following full rental period.

Although the tenant argued that she had been told to move out on July 12, there is no evidence to corroborate her oral testimony and in the absence of such corroboration, I am not persuaded on the balance of probabilities that the tenant was required to vacate early.

The tenant's advocate suggested that the landlord should be barred from making a claim because he had failed to complete a condition inspection report. Although the Act provides that when landlords fail to complete condition inspection reports their right to claim against a security deposit is extinguished, in this case, the landlord did not claim against the security deposit but simply filed a monetary claim. I find that there is no provision in the Act whereby the landlord is prevented from making such a claim.

I find that the tenant was responsible to pay rent for the rental period from July 12 – August 11. I find that the landlord acted reasonably to mitigate his losses and that he is entitled to recover lost income for that period. I award the landlord \$530.00.

The tenant did not pay a filing fee and at the hearing, the landlord agreed to withdraw his claim for recovery of the filing fee.

Conclusion

The parties have each been awarded \$530.00. Setting off these awards as against

each other results in each party having been fully compensated and therefore it is unnecessary to issue a monetary order.

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 23, 2012

Residential Tenancy Branch