



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, 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 an order for return of her security/pet deposit totaling \$550.00.

The landlord's application is a request for a monetary order for \$1450.00, a request for recovery of the \$50.00 filing fee, and a request to retain the security deposit towards the claim.

Tenant's application

Background and Evidence

This tenancy began on April 1, 2012, and the tenant vacated on July 28, 2012.

A forwarding address in writing was given to the landlord on July 28, 2012.

The landlord has not returned the tenants security/pet deposit, and did not apply for dispute resolution to keep the deposits, within the time frame set out under the Residential Tenancy Act.

When asked why she had not applied for dispute resolution within the 15 day time frame, the landlord stated that she did not apply because she had already told the tenant she would not be getting her security deposits back.

Analysis

The Residential Tenancy Act states that, if the landlord does not either return the security/pet deposit, get written permission from the tenant to keep the security/pet 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/pet deposit.

The landlord did not return the security/pet deposit or apply for dispute resolution within the 15 day time frame allowed under the Residential Tenancy Act and the tenant did not give the landlord any written permission to keep any or all of the security/pet deposit.

This tenancy ended on July 28, 2012 and the landlord has admitted that she had a forwarding address in writing by July 28, 2012, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore even though the tenant has not applied for double the security/pet deposit, I am required to order that the landlord must pay double the amount of the security/pet deposit to the tenant.

The tenant paid a combined security/pet deposit of \$550.00, and therefore the landlord must pay \$1100.00.

Landlord's application

Background and Evidence

The landlord testified that:

- The tenant did not give the required one clear month notice to end tenancy, giving notice on July 17, 2012 to vacate on July 28, 2012.
- She attempted to re-rent the unit for the month of August 2012 and ran numerous advertisements; however she was unable to re-rent the unit and therefore lost the full August 2012 rent.
- When the tenant moved into the rental unit she gave the tenant a \$200.00 reduction from the rent because the tenant stated she would paint the rental unit.
- The tenant did not paint the rental unit during the tenancy and therefore she is asking for that rent reduction to be paid.
- When the tenant moved into the rental unit there was no damage to the unit, however when she moved out there was a significant number of screws that had been put into the walls to hang pictures, and as a result all those screws had to be removed, holes filled and sanded, and the sanded areas had to all be primed before the unit could be repainted.
- The tenant also left numerous belongings behind which all had to be removed by the landlord.

She is therefore requesting a monetary order as follows:

| | |
|---|-----------|
| August 2012 lost rental revenue | \$750.00 |
| Return of rent reduction | \$200.00 |
| Repairing the rental unit and removing the tenants belongings | \$300.00 |
| Cost of materials for repairs | \$200.00 |
| Filing fee | \$50.00 |
| Total | \$1500.00 |

The tenant testified that:

- She agrees that she did not give the required one month notice, because she did not have the money to pay the rent and would've been evicted anyway.
- She was given a \$200.00 rent reduction for painting; however she never did do the painting.
- She denies doing any damage to the rental unit and denies putting any screws in the walls of the rental unit, the rental unit was left in the same condition in which she received it.
- She did leave some belongings behind, however she left them for the new tenant believing he may want to have them. She did not have any agreement with the new tenant to leave items for him.

Analysis

August 2012 lost rental revenue

The tenant has admitted that she did not give the required one clear month notice to end tenancy, and therefore since the landlord lost the full rental revenue for the month of August 2012 it is my finding that the tenant is liable for that lost rental revenue.

Rent reduction for painting

The tenant has admitted that she did get a rent reduction of \$200.00 for painting which she failed to do and therefore I also allow the claim for return of the rent reduction.

Damages

The landlord claims of the that the tenant cause significant damages to the walls of the rental unit, however since no move-in inspection report was done it is basically the landlords word against that of the tenant, and the tenant denies causing any damages.

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.

Therefore in this case is my finding that the landlord has not met the burden of proving that the tenant cause damage to the rental unit, and the claim for labour and materials to repair damages is dismissed.

Removal of tenants belongings

The tenant has admitted that she left some belongings behind, and that she did not have any agreement with the new tenant to accept those belongings. Therefore I will allow a portion of the landlords claim for removal of those belongings.

The landlord has supplied no evidence however of what the actual cost to remove the belongings was and therefore I will only allow a nominal amount of \$50.00

I also allow the landlords claim for recovery of the \$50.00 filing fee. The landlord has also asked for the costs of registered mail and photocopying, however I have no authority to award any costs other than the filing fee.

Therefore the total amount of the landlords claim I have allowed is as follows:

| | |
|---------------------------------|-----------|
| August 2012 lost rental revenue | \$750.00 |
| Return of rent reduction | \$200.00 |
| Removal of tenants belongings | \$50.00 |
| Filing fee | \$50.00 |
| Total | \$1050.00 |

Conclusion

I have allowed at \$1100.00 in the tenant's application, and I have allowed \$1050.00 in the landlord's application. I have therefore set off the \$1050.00 against the \$1100.00, and I've issued an order for the landlord to pay \$50.00 to the tenant.

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: December 10, 2012.

Residential Tenancy Branch