



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNDC, and FF

Introduction

This hearing was convened in response to an Application for Dispute Resolution, in which the Tenant applied for the return of their security deposit, a monetary Order for money owed or compensation for damage or loss; and to recover the filing fee from the Landlord for the cost of filing this application.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions.

The Landlord submitted documents to the Residential Tenancy Branch, copies of which were served to the Tenant. The Tenant acknowledged receipt of the Landlord's evidence and it was accepted as evidence for these proceedings.

The male Tenant stated that the Tenant submitted documents to the Residential Tenancy Branch, copies of which were served to the Landlord. The Landlord acknowledged receipt of the Tenant's evidence however I did not have copies of the evidence before me at the time of the hearing. The Tenant opted to proceed with the hearing with the understanding that an adjournment would be granted if it became necessary for me to view a document that the Tenant had submitted as evidence. The hearing was concluded without a request for an adjournment.

Issue(s) to be Decided

Is the Tenant is entitled to the return of the security deposit and to recover the cost of filing this Application for Dispute Resolution?

Background and Evidence

The Landlord and the Tenant agree that this tenancy began in January of 2012; that that the Tenant paid a security deposit of \$430.00; that rent of \$860.00 was due by the first day of each month; and that a condition inspection report was completed at the start of the tenancy.

The male Tenant stated that on July 31, 2012 the Tenant hand delivered written notice to end the tenancy on September 01, 2012. The Landlord stated this notice was delivered on August 01, 2012.

The Landlord and the Tenant agree that the keys to the rental unit were returned to the Landlord on August 26, 2012; that the Tenant did not occupy the rental unit after August 26, 2012; and that a final condition inspection report was completed on August 28, 2012.

The Landlord and the Tenant agree that the Tenant authorized the Landlord, in writing, to retain \$101.83 from the security deposit; that the Tenant provided the Landlord with a forwarding address, in writing, on August 28, 2012; and that the Landlord returned the remaining \$328.17 to the Tenant, in person, on September 15, 2012.

Analysis

Section 44(1)(a)(i) of the *Residential Tenancy Act* (*Act*) stipulates that a tenancy ends if the tenant gives notice to end the tenancy in accordance with section 45 of the *Act*. Section 45(1)(a) of the *Act* stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice. Section 45(1)(b) of the *Act* stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

On the basis of the undisputed evidence presented at the hearing, I find that the Tenant gave the Landlord written notice of their intent to end the tenancy on September 01, 2012. As rent was due by the first day of each month, I find that this notice did not comply with section 45(1)(b) of the *Act*. To end this tenancy in accordance with section 45 of the *Act* in these circumstances, the Tenant needed to serve the Landlord with written notice to end the tenancy, on or before July 31, 2012, which declared the tenancy would end on August 31, 2012.

Section 53 of the *Act* stipulates that if a tenant gives notice to end a tenancy on a date that is earlier than the earliest date permitted by the legislation, the effective date is deemed to be the earliest date that complies with the legislation. In these circumstances, the earliest effective date of the notice that was served by the Tenant was September 30, 2012. Therefore, I find that the Tenant's notice to end tenancy actually served to end this tenancy on September 30, 2012.

Section 44(1)(d) of the *Act* stipulates that a tenancy ends when the Tenant vacates and abandons the rental unit, which in these circumstances was August 26, 2012.

Section 44(1)(f) of the *Act* stipulates that a tenancy ends when the director orders it is ended. In these circumstances, I find it appropriate to determine that this tenancy

ended on August 31, 2012, in accordance with section 44(1)(f) of the *Act*. In determining this matter I was heavily influenced by the fact that both parties understood the Tenant did not wish to occupy the rental unit in September of 2012, so extending the end date of the tenancy to September 30, 2012 would not benefit either party. I was further influenced by the fact that the Tenant was legally entitled to occupy the rental unit until August 31, 2012 even if they elected to vacate the rental unit prior to that date.

On the basis of the undisputed evidence, I find that the Tenant paid a security deposit of \$430.00; that the Tenant gave the Landlord written authority to retain \$101.83 of the security deposit; and that the Landlord returned the remainder of the security deposit within fifteen days of the tenancy ending. I therefore find that the Landlord has complied with section 38(1) of the *Act*, and that the Tenant is not entitled to a further refund.

Section 38(6) of the *Act* stipulates that if a landlord does not comply with subsection 38(1) of the *Act*, the Landlord must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable. As I have found that the Landlord did comply with section 38(1) of the *Act*, I find that compensation pursuant to section 38(6) of the *Act* is not warranted.

Conclusion

I find that the Tenant's Application for Dispute Resolution has been without merit and I dismiss the application to recover the fee for filing this Application for Dispute Resolution.

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 05, 2012.

Residential Tenancy Branch