



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNR, MNSD, FF
Tenant: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided are whether the tenant is entitled to a monetary order for return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The tenant submitted a copy of a tenancy agreement signed by the parties on July 23, 2012 for a 12 month fixed term tenancy agreement beginning on August 1, 2012 for a monthly rent of \$950.00 with a security deposit of \$475.00 and a pet damage deposit of \$475.00 paid.

The rental accommodation was a shared living arrangement with three tenants who each had a separate tenancy agreement with the landlord and each had their own bedroom and shared the common space. The parties agree the bedrooms did not have locks on them but this tenant had put a lock on his door.

The tenant submits that as a result of the other tenants partying and failure to clean up after their parties the tenant decided he was unable to live under the circumstances. The landlord submits the tenant had a responsibility to check out his "roommates" prior to entering into the tenancy agreement.

The parties agree the tenant gave the landlord notice on August 28, 2012 that he would be vacating the rental unit on or before October 1, 2012 and the tenant provided his forwarding address on October 17, 2012. The tenant submits that he moved his belongings out of the rental unit on August 31, 2012 and informed the landlord of this by email on September 1, 2012.

The parties agree the tenant paid no rent for the month of September. The landlord submits he had a new tenant move in to the rental in October 2012.

The parties agree that at the start of the tenancy the unit was not available for occupancy as the landlord had not obtained an occupancy permit from the local fire department until August 6, 2012 and as such the parties agree the tenant would be entitled to a reduction in rent for August 2012 in the amount of \$150.00.

The parties also agree the landlord had agreed to pay the tenant \$250.00 for some cleaning required in the unit preparing it for occupancy. The parties also agree the landlord had agreed to pay the tenant for moving furniture from the rental unit to the landlord's home community. The tenant submits the agreement was for \$200.00 plus \$150.00 for gas. The landlord remembers this agreement to be for \$300.00 in total.

The landlord submits that he had only agreed to the moving of the furniture because the tenant was signing a 1 year fixed term tenancy agreement and bringing his own furniture even though the landlord had intended to rent the property furnished. He further states that once the tenant reneged on the fixed term tenancy he felt he should not have to pay this amount to the tenant.

The parties agree that they had agreed the tenant would be able to reduce his September 2012 rent payment by the total of these amounts (Tenant's total - \$750.00; Landlord's total - \$700.00). In email correspondence dated August 28, 2012 submitted by the tenant, the landlord states: "I think you and I agreed on \$200.00 net rent for September."

The parties agree the landlord returned the tenant's pet damage deposit in the amount of \$475.00 by cheque dated November 1, 2012.

Analysis

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after

the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

From the evidence provide by both parties I find the tenant did not provide the landlord with a written notice of a breach of a material term and give the landlord a reasonable time to correct the situation or indicate to the landlord that if the landlord failed to correct the situation that he would end the tenancy.

Rather, I find the tenant simply gave the landlord notice to end the tenancy on a date that was prior to the end of the fixed term. As such, I find the tenant was responsible for the payment of rent until the end of the fixed term, subject only to the landlord's obligation to take all reasonable steps to mitigate any loss he would have suffered due to the early end to the tenancy.

As the landlord found a new tenant for October 2012 I find the tenant is only responsible for the payment of rent for the month of September 2012. As the landlord has provided no evidence that the agreement to a rent reduction in September for previously agreement upon compensation to the tenant was contingent on the duration of the tenancy agreement I find the landlord cannot now withdraw that compensation.

As to the value of that compensation, in the absence of any written agreement outlining, specifically the compensation the landlord intended to provide for moving the furniture from the unit to another community I find the email dated August 28, 2012 outlines the landlord had agreed to rent for September 2012 in the amount of \$200.00 inferring the compensation to be \$750.00.

Therefore I find the landlord is entitled to \$200.00 for rent for the month of September 2012.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit and pet damage deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the testimony and email correspondence provided into evidence I find the tenant informed the landlord of his forwarding address on October 17, 2012 and as such the landlord had until November 1, 2012 to either return the deposit or file an Application for Dispute Resolution to claim against the deposit.

As the landlord's Application for Dispute Resolution was received by the Residential Tenancy Branch on October 18, 2012 I find the landlord has complied with Section 38(1) and the landlord is not required to provide the tenant with double the amount of the security deposit. Further as the landlord returned the tenant's pet damage deposit by November 1, 2012 I find the landlord has complied with Section 38(1) in regard to the return of the pet damage deposit.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$200.00** comprised of rent owed and the tenant is entitled to **\$475.00** for return of the security deposit

I order the landlord may deduct the amount owed to him (\$200.00) from the security deposit held in the amount of \$475.00 in satisfaction of his claim. I grant a monetary order in the amount of **\$275.00** to the tenant for the balance of the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As both parties we are at least partially successful I find they are both entitled to recover the filing fee from the other party. However as the filing fees were equal I have not included them in the orders above.

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: January 25, 2013

Residential Tenancy Branch

