



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MNR, FF.*

Introduction,

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for rent and the filing fee and to retain the security deposit in satisfaction of her claim. The tenant applied for the return of his security deposit and for compensation in the amount of \$5,000.00. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for rent and the filing fee? Is the tenant entitled to a monetary order for the return of his security deposit and for compensation?

Background and Evidence

The tenancy started on July 01, 2011 for a fixed term of one year ending June 30, 2012. The monthly rent was \$1,200.00 payable on the first of each month. The tenant paid a security deposit of \$600.00. On March 27, 2012, the tenant wrote a note to the landlord informing her that he would be ending the tenancy effective April 01, 2012. The tenant stated that when he gave notice, he had already moved out at the end of February and therefore he did not pay rent for March 2012. The landlord has applied for rent for March 2012 in the amount of \$1,200.00.

On August 09, 2012, the tenant wrote a note to the landlord providing her with his forwarding address and requesting the return of the security deposit of \$600.00. The landlord filed her application on August 20, 2012.

The tenant stated that when he viewed the rental unit, it was still occupied by the then current tenants and therefore he did not notice some discrepancies. The tenant testified that soon after he moved in, he noticed that the washer was leaking and informed the landlord about the problem. The tenant stated that about a "couple of months" later the landlord had it fixed. The landlord stated that she sent in a plumber immediately and the problem was rectified by July 15. The tenant also stated that the furnace would not fire up properly and he informed the landlord who had it fixed after two weeks.

The tenant stated that the rental unit was in no condition to be rented and he should not have had to pay such a high rent for a rental unit that was mouldy and infected his pets with fleas. The tenancy continued for eight months before the tenant decided to move out. The tenant has applied for compensation in the amount of \$5,000.00 towards the rent he paid during the tenancy and has also applied for the return of his security deposit.

Analysis

Landlord's application:

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

In this case the tenant gave notice to end the fixed term tenancy on March 27, 2012 to end the tenancy effective April 01, 2012. The tenant agreed that he had not paid rent for March. He argued that he had already moved out a month before he gave notice and therefore he did not owe rent. Despite having broken a fixed term tenancy prior to the effective date of the end of the fixed term and not having given one month's notice to do so, the landlord has only applied for rent for the month of March.

I find that the landlord is entitled to her claim for rent in the amount of \$1,200.00. Since the landlord has proven her case she is entitled to the recovery of the filing fee of \$50.00. Overall the landlord has established a claim of \$1,250.00.

Tenant's application:

The tenant stated that there were problems with the condition of the rental unit which he did not notice until he moved in. He informed the landlord of problems with the washer and the furnace. The tenant could not recall dates of the complaint or when the landlord fixed the problem. The landlord was able to provide dates and stated that she responded to the complaints immediately.

The tenant stated that he should not have had to pay rent in the amount of \$1,200.00, given the condition of the rental unit. He filed photographs which he stated were taken at the time he moved in. The photographs indicate some discrepancies in the rental unit.

Based on the testimony of both parties, I find that the tenant reported two problems to the landlord who attended to them immediately. I find that the tenant did not report any other problems to the landlord and if there were problems, the tenant had the opportunity to file for dispute resolution, in the event that the landlord did not carry out the required repairs. Based on the testimony of both parties I find that the landlord acted in a responsible manner and responded to the tenant's complaints in a timely manner.

The tenancy continued for eight months even though the tenant described the conditions of the rental unit as "unacceptable". The tenant waited a further seven months after the end of tenancy, before he applied for compensation of \$5,000.00.

Based on the above reasons, I find that the tenant has not proven a claim for compensation. Since the tenant has not proven his case he must bear the cost of filing his application.

The landlord has not made a claim for damages against the security deposit and therefore I find that the tenant is entitled to the return of the security deposit in the amount of \$600.00.

Overall the landlord has established a claim of \$1,250.00 and the tenant has established a claim of \$600.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$650.00 which consists of the difference between the established claims of both parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$650.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$650.00**.

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 02, 2012.

Residential Tenancy Branch

