



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenant's application is seeking orders as follows:

1. Return all or part of double the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is either party entitled to the security deposit?

Background and Evidence

The tenancy began on August, 1, 2012. Rent in the amount of \$675.00 was payable on the first of each month. A security deposit of \$337.50 was paid by the tenant. The tenancy ended on September 30, 2012.

Landlord's application

The landlord testified on September 28, 2012, he receives an envelope from the tenant which was to contained rent for the month of October 2012. The landlord stated when he opened the envelope he was surprised that the cheque was issued for only half of the rent for October, 2012.

The landlord testified he went and talked to the tenant and was told that she would be moving out and that she knew that he would not give the security deposit back so that amount was deducted from the rent. The landlord stated he returned the cheque to the tenant as she was required to pay the full amount of rent and he also informed the tenant that she was required to provide written notice to end the tenancy.

The tenant testified she wrote a letter on September 28, 2012, which she tried to give the landlord but he would not take it. The tenants stated later that day the landlord told her she had three days to get out and if she was not out she would be thrown out. The tenant stated she was told she would get her full security deposit back if she was out within three days.

Tenant's application

The tenant testified she provided to the landlord her forwarding address on the back of the envelope on September 30, 2012. However, she did not provide her forwarding address in a letter requesting her security deposit to be sent to that address.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the each party has the burden of proof to prove a violation of the Act by the other party and a corresponding loss.

Under section 16 of the Act, the right and obligation of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into

Section 44 of the Act defines how a tenancy ends.

- 44 (1) A tenancy ends only if one or more of the following applies:*
- (a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:*
 - (i) section 45 [tenant's notice];*
 - (ii) section 46 [landlord's notice: non-payment of rent];*
 - (iii) section 47 [landlord's notice: cause];*
 - (iv) section 48 [landlord's notice: end of employment];*
 - (v) section 49 [landlord's notice: landlord's use of property];*
 - (vi) section 49.1 [landlord's notice: tenant ceases to qualify];*
 - (vii) section 50 [tenant may end tenancy early];*

The evidence of the landlord was on September 28, 2012, he received a portion of rent for October 2012 and was told by the tenant to retain the security deposit for the balance of rent owed as she believed the landlord was not going to return the security deposit. The evidence of the tenant was the landlord told her to move out of the unit within three days.

In this case, there was no evidence submitted that the tenant was served with any notice under section 44 of the Act ending the tenancy by the landlord. As a result, there was no requirement for the tenant to vacate the unit.

I accept the evidence of the landlord that the tenant was ending the tenancy without proper notice as that is support by the tenant only paying a portion of rent for October 2012 and informing the landlord to keep the security deposit. The evidence of the landlord was that he refused to accept this and returned the partial rent payment to the tenant as he was seeking rent to be paid in full.

Tenant's notice

- 45 (1) A tenant may end a periodic 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, and*
 - (b) 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 September 30, 2012, the tenant vacated the rental unit without providing notice as required under section 45 of the Act, the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached section 45 of the Act as the earliest date they could have legally ended the tenancy was October 31, 2012.

Rules about payment and non-payment of rent

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 17 of the Residential Tenancy Policy guideline states a tenant may not apply all or part of the security to rent without written consent of the landlord.

The evidence of both parties was the tenant gave the landlord a portion of rent tenant, however, this was returned as the evidence of the landlord was he was not accepting partial payment. I find the tenant has breached section 26 of the Act when they failed to pay rent in full when rent was due under the terms of the tenancy agreement.

As a result of the breach, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. Therefore, the landlord is entitled to unpaid rent for October 2012 in the amount of **\$675.00**.

I find that the landlord has established a total monetary claim of **\$725.00** comprised of the unpaid rent and the \$50.00 fee paid for this application.

I order that the landlord to retain the deposit of **\$337.50** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$387.50**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Tenant's application

The evidence of the tenant was her forwarding address was provided on September 30, 2012, as the address was written on the back of an envelope provided to the landlord.

I find in this case, providing an address on the back of an envelope is not sufficient, as the tenant is to clearly state in writing that they are seeking the return of the security deposit and the address the deposit is to be mailed to.

As a result of the above finding, I find the tenant's application for return of double the security deposit must be dismissed. The tenant is not entitled to recover the cost of filing the application from the landlord.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and is granted a formal order for the balance due.

The tenant's application is dismissed.

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 15, 2013

Residential Tenancy Branch

