



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on November 26, 2012 for:

1. An Order for the return of the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on December 12, 2012 for:

1. An Order to retain all or part of the security deposit – Section 38;
2. A Monetary Order for compensation – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

Neither Party provided any documentary evidence in advance of the hearing. Both Parties referred to evidence for which there was documentary evidence existing but not submitted. The Landlord requested the opportunity to fax in documentary evidence. The Landlord states that he did not know he needed to submit any evidence as this was his first time in a dispute resolution hearing. The Landlord states that he did not read the Notice of hearing letter setting out the submission of evidence to support the claims being made.

Rule 3.5 of the Residential Tenancy Branch Rules of Procedure provides that copies of any evidence to be relied upon at the hearing must be provided by at least five days before the hearing. As the Landlord took no action to inform himself of the procedures, rules or need for evidence and as acceptance of the Landlord's documentary evidence after the hearing would prejudice the Tenant by limiting the Tenant's ability to respond to the late submissions, I deny the request to submit late evidence.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Is the Landlord entitled to the amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The Landlord states that about a year to a year and ½ ago, the Tenant came to look at this unit, agreed to rent the unit for \$850.00 per month and paid a security deposit of \$425.00. The Tenant states that the unit was first looked around December 20, 2011 for a January 1, 2012 tenancy start date. The Landlord agrees that it was either December or January 2011 that the Tenant first saw the unit. The Landlord states that a couple of days later the Tenant told the Landlord that he was moving to Calgary and could not rent the unit. The Landlord states that the Tenant asked for return of the security deposit and that the Landlord informed the Tenant that if the Landlord were able to rent the unit for the tenancy start date, the security deposit would be returned. The Landlord states that the unit was advertised for rent on craigslist at the same rent level and was rented for February 1, 2012. The Landlord claims lost rental income of \$850.00.

The Tenant states that the Landlord was in a hurry at the time and that the Tenant did not have full opportunity to see the unit so the Landlord told the Tenant to return the next day. The Tenant states that upon return the next day, the Tenant met with the Landlord's brother and discovered that one of the rooms in the unit did not have heat.

The Tenant states that the Landlord told the Tenant not to worry and that the heat would be fixed after they moved in. The Tenant states that as they have a young child they could not rent this unit without heat and told the Landlord that they could not rent the unit for this reason and wanted the security deposit back. The Tenant states that he attended the Landlord's home on more than one occasion to obtain the return of the funds and provided a forwarding address to the Landlord in the application for dispute resolution. The Tenant states that the application for dispute resolution was served on the Landlord in person and by registered mail on November 29, 2012. The Tenant claims return of double the security deposit.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Based on the undisputed evidence that a security deposit was paid to the Landlord for the rental of the unit, I find that a tenancy agreement was entered into between the Parties.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Although the Landlord states that advertising was carried out, as the Landlord provided no supporting evidence of this, and considering that the Landlord was unsure about the dates of receipt of the security deposit and the start of the tenancy, I find on a balance of probabilities that the Landlord's oral evidence that the unit was advertised is insufficient to show that the Landlord carried out reasonable efforts to mitigate rental losses and that the Landlord is therefore not entitled to lost rental income. As a result, I dismiss the Landlord's application.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit.

As the Tenant did not send his forwarding address in writing to the Landlord prior to serving the application for dispute resolution, I find that the Landlord received the forwarding address upon receipt of the application and that the Landlord filed its application within the time frame required under the Act. I find therefore that the Landlord is not required to return double the security deposit to the Tenant.

Although the Tenant is not entitled to return of double the security deposit, given the finding that the Landlord has no claim against the Tenant, I find that the Landlord may not retain any portion of the security deposit and that the Tenant is therefore entitled to return of the security deposit of **\$425.00** plus zero interest. As the Tenant has been successful with its application, I find that the Tenant is also entitled to recovery of the \$50.00 filing fee for a total monetary entitlement of \$475.00.

Conclusion

I grant the Tenant a monetary order under Section 67 of the Act for **\$475.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: March 04, 2013

Residential Tenancy Branch

