



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security deposit and to recover the filing fee from the tenant for the cost of this application.

The tenant, the tenant's agent and the landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agree that this tenancy was due to start on December 01, 2012. Rent had been agreed at \$1,000.00 per month due on the first day of each month. The tenant paid a security deposit of \$500.00 on November 28, 2012.

The landlord testifies that when he advertised this unit for rent he originally had three people interested in the unit. Later it was this tenant and another tenant who both

wanted the unit and the landlord informed them that whoever could pay the security deposit first could have the unit. The landlord testifies that on November 28, 2012 this tenant paid a security deposit and entered into a verbal agreement to rent the unit starting on December 01, 2012. The landlord testifies that he had put together a message to send to the party who was not successful but inadvertently sent it to this tenant instead of sending a message to the unsuccessful tenant. The landlord testifies that he then sent another message saying the message was a mistake and the landlord notified the other prospective tenant that he had rented the unit to this tenant. The landlord testifies that the tenancy agreement had not been signed by the parties at this time but a verbal agreement had been formed when the security deposit exchanged hands.

The landlord testifies that on November 30, 2012 the tenant informed the landlord that she could not rent the unit as the tenant could not get the rent from welfare. The landlord testifies that he had signed a welfare letter for the tenant. The landlord testifies that the tenant requested the security deposit back and the landlord informed the tenant that if the landlord could re-rent the unit for December 01, 2012 the landlord would return the deposit. The landlord contacted the other interested party but they had already found another rental unit. The landlord testifies that he placed an advertisement that day on an internet rental site and was able to secure new tenants on December 01, 2012 for a tenancy starting on January 01, 2013. The new tenants signed a tenancy agreement on December 01, 2012 and paid a security deposit.

The landlord agrees that the tenant came back after December 01, 2012 and wanted the unit again however the landlord explained that as the landlord had now re-rented the unit to new tenants for January 01, 2013 this tenant could stay for a few weeks if the tenant paid rent but could not rent the unit beyond January 01, 2013 as the tenant had informed the landlord she did not want the unit on November 30, 2012.

The landlord seeks an Order to be permitted to keep the tenants security deposit in partial satisfaction of the loss of income incurred for December, 2012. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The tenant's agent disputes the landlords claim. The tenant's agent refers to the landlord documentary evidence in the form of messages between the tenant and landlord. The tenant's agent testifies that as the tenant found early in December that she could get the rent money, the landlord should have agreed that the tenant could rent the unit or return the tenants security deposit to the tenant. The tenant's agent testifies that the tenant was trying to get the rent money through the government office and the tenant still wanted the unit. The tenant's agent testifies that the landlord could have told the new tenants that they could not rent the unit as this tenant had paid a security deposit. The tenant's agent testifies that this happened before the landlord had entered into a new agreement with these other tenants.

The landlord disputes the tenant's agent claims. The landlord testifies that the new tenancy agreement was signed on December 01, 2012 and a security deposit was paid on that date. Therefore the landlord must comply with the *Act* and could not cancel that agreement with the new tenants because this tenant had changed her mind again.

The tenant testifies that the landlord should return the security deposit paid as the landlord now has another deposit from the new tenants and so has not lost any rent money.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 16 and 17 of the *Residential Tenancy Act* which states:

Start of rights and obligations under tenancy agreement

- 16** 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.

Landlord may require security deposit

- 17** A landlord may require, in accordance with this *Act* and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

With this in mind I have considered the arguments put forth by the parties and find the tenant did enter into a tenancy agreement when the tenant verbally agreed to rent the unit and paid a security deposit; therefore the rights and obligations of both parties started at that point. The tenant later informed the landlord that she could not rent the unit however as an agreement had been entered into for the tenancy to start on December 01, 2012 the tenant would still have to provide the landlord with one clear months notice to end the tenancy. This means that in accordance with s. 45(1) of the *Act* the tenant could not end the tenancy any earlier than one month after the date the landlord receives the notice, and would be responsible for rent for December.

The tenant argues that as the tenant changed her mind again and then wanted to rent the unit the landlord should have agreed to this or return the tenant's security deposit. The landlord argues that he could not agree to this as the landlord had found new tenants and entered into an agreement with them to rent the unit from January 01, 2013. When a tenant has given the landlord verbal confirmation that the tenant no longer wants to rent the unit a landlord is obligated under the *Act* to mitigate any loss of rent by renting the unit as quickly as possible. I find the landlord did inform the tenant that she could rent the unit for December only if the tenant paid rent for that month but the tenant did not agree to this. I find the landlord advertised the unit for rent on the day the tenant informed the landlord that the tenant could not rent the unit and therefore the

landlord was able to re-rent the unit for the month of January, 2013. Therefore the landlord is entitled to recover rent from the tenant for December, 2012 however the landlord only seeks to keep the tenants security deposit of \$500.00 in satisfaction of the tenant's obligation to pay rent.

Consequently I find in favor of the landlords claim to keep the tenants security deposit pursuant to s. 38(4)(b) of the *Act*. As the landlord has been successful with this claim I find the landlord is also entitled to recover the **\$50.00** filing fee from the tenant.

Conclusion

I HEREBY ORDER the landlord to keep the security deposit of **\$500.00**. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$50.00** for the filing fee. The order must be served on the respondent and is enforceable through the Provincial Court 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: April 22, 2013

Residential Tenancy Branch

