



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNDC, MNSD

Introduction

This hearing was convened in response to an application by the tenant under the *Residential Tenancy Act* (the Act) for an Order for the return of double their security deposit and compensation for loss. The tenant participated in the conference call hearing and the landlord did not. The tenant presented evidence showing that they had served the landlords with the application for dispute resolution and notice of hearing by registered mail on January 12, 2013. I found that they had been properly served with notice of the claim against them and that under the Act the landlord is deemed served on the 5th. day after the registered mail was sent and the hearing proceeded in their absence on the merits of the claim.

Issue(s) to be Decided

Is the tenant entitled to the monetary amounts claimed?

Background and Evidence

The tenant's undisputed evidence is as follows. The tenancy started October 14, 2012 as a verbal tenancy arrangement, which has since ended. The tenancy was the rental of a room in a house with shared amenities. The tenant paid the landlord a \$300.00 security deposit at the outset of the tenancy. The rent of \$600.00 per month was payable on the 1st. of each month. The tenancy ended December 16, 2012 and on December 24, 2012 the tenant personally gave the landlords their forwarding address in writing within a letter, of which the tenant provided a copy. The tenant claims they have not been returned the security deposit.

The tenant also seeks to recover a portion of the rent paid for December 2012. The tenant testified that on December 03, 2012 they verbally notified the landlord of their plan to vacate a month later but as a result of circumstances they felt uncomfortable remaining longer - choosing to vacate December 16, 2012. The tenant seeks for the return of the pro-rated balance of December 2012 rent, which they refer to as *overpaid rent*, for the period December 17 – 31, 2012.

Analysis

I find the tenant's evidence is that they paid the payable rent for the monthly rental period of December 2012, but determined to vacate before the end of the rental period. I further find the tenant evidence is that they did not provide the landlord with legal notice to end the tenancy in accordance with **Section 45** of the Act, which in relevant parts prescribes as follows:

- 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.
- (4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find the landlord is entitled to rent for the rental period of December 2012 and is not legally obligated to return to the tenant any portion of the rent paid unless the tenancy ended in accordance with the Act and the landlord collected rent for a period to which they were not owed rent. As a result, **I dismiss** this portion of the tenant's claim, without leave to reapply.

I find **Section 38(1)** of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord received the tenant's forwarding address on December 24, 2012 and I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address and are therefore liable under section 38(6) which provides that the landlords must pay the tenant double the amount of the security deposit. The landlord currently holds a security deposit of \$300.00 and I find that they are obligated under section 38 to return double this amount. I award the tenant **\$600.00**.

Conclusion

I grant the tenant an Order under Section 67 for **\$600.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 03, 2013