



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNSD, MNDC, FF
Tenant: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

The tenant named a second landlord on her Application for Dispute Resolution, however, the tenancy agreement only lists one person as landlord and that person is also the applicant in the landlord's Application for Dispute Resolution. For these reasons, I amend the tenant's Application to exclude the second named responded.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and utilities; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for the return of the security and pet damage deposits and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

Both parties provided an unsigned copy of a tenancy agreement for an 11 month and 15 day fixed term tenancy beginning on October 15, 2012 for a monthly rent of \$1,000.00 due on the 1st of each month. The agreement stipulates that a security deposit of \$500.00 and a pet damage deposit of \$500.00 were required.

The landlord submits the tenant had agreed for the rental to begin on October 15, 2012 but that due to the urgency and his current location they could only communicate by

email. He attempted to send her the tenancy agreement and the tenant acknowledges receiving it but it was still unsigned. The agreement stipulated the tenant was responsible for a portion of the utilities as outlined by the landlord's claim.

The landlord submits that the tenant had a friend look at the unit and that she had not seen it herself until October 15, 2013. The tenant submits that she arrived at the rental unit on October 15, 2013 looked inside and decided it would not meet her needs and so she called the landlord and left him a message on his cell phone that she would not be taking the rental unit.

The tenant submits that she provided her forwarding address to the landlord by mail on January 10, 2013. The landlord states that because he was having trouble having his mail forwarded from his service address he did not receive the tenant's change of address until mid February 2013.

The parties agree the tenant paid the landlord \$500.00 for rent for the period of October 15, 2013 to October 31, 2013 and the \$500.00 security deposit. The pet damage deposit was not paid.

Analysis

Section 1 of the *Act* defines a tenancy agreement as an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit.

As such, and based on the testimony and evidence of both parties, I find the parties entered into a tenancy agreement for the tenancy to begin on October 15, 2013. I find also that as a result of the tenant providing the landlord with a payment of rent and the security deposit the agreement was actualized.

Section 16 states 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.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

In accordance with Section 16, I find the tenant had an obligation to end the tenancy in accordance with Section 45, if she so choose to end the tenancy after the agreement was entered into, despite the agreement, at that point, being verbal.

I therefore find the tenant had an obligation to pay the landlord the rent and utilities claimed by landlord for the month of November. I accept the landlord took reasonable steps to mitigate this loss but was unable to re-rent the unit until December 2013.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the testimony of both parties, I find that the tenant provided the landlord with her forwarding address by mail on January 10, 2013 as such, and in accordance with the delivery provisions in Section 90 the landlord should have received the forwarding address 5 days later or January 15, 2013.

As the tenant used the address provided by the landlord, the landlord was obligated to respond with return of the security deposit or filing an Application for Dispute Resolution to claim against the deposit no later than January 30, 2013. The fact the landlord's mail was not being appropriately forwarded is a result of his failure to give a more direct service address and cannot impact the tenant's right to return of the security deposit.

In addition, the landlord did file an Application to claim against the deposit until April 25, 2013, at least a month after he did receive the tenant's forwarding address. As a result, I find the landlord failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit in accordance with Section 38(6).

I find that since the tenant acknowledges that she did not pay the pet damage deposit she is not entitled to the return of double the amount of the expected but unpaid pet damage deposit and I dismiss this portion of her claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,320.02** comprised of \$1,000.00 rent owed; \$270.02 utilities owed and the \$50.00 fee paid by the landlord for his Application.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of \$1,050.00 comprised of \$1,000.00 double the security deposit and the \$50.00 fee paid by the tenant for her Application

I order the landlord may deduct the amount of \$1,050.00 awarded to the tenant in partial satisfaction of his claim. I grant a monetary order to the landlord in the amount of **\$270.02**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: May 22, 2013

Residential Tenancy Branch

