



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: 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 only.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 7, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the testimony of the landlord and the fact that this hearing was also for the tenant's Application, I find that the tenant has been sufficiently served with the documents pursuant to the *Act* and he was sufficiently aware of this hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; 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 *Act*.

It must also be decided if the tenant is entitled to a monetary order return of the security deposit 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 a copy of a tenancy agreement signed by the parties on October 11, 2011 for a 1 year fixed term tenancy beginning on November 1, 2011 that converted to a month to month tenancy on November 1, 2012 for a monthly rent of \$860.00 due on the 31st of each month with a security deposit of \$430.00.

The tenant submits he provided the landlord with a notice to end his tenancy dated November 7, 2012 by placing it in the secured box where he normally paid rent. The tenant submits that he asked the landlord to provide him with any cleaning instructions prior to the end of the tenancy and that he received none. The tenant submitted in his written documentation that he was completely moved out by December 11, 2012

The landlord submits the tenant did provide him with notice of his intention, including his forwarding address on November 7, 2012, to end the tenancy by the end of December 2012 but that when the landlord left notices, beginning December 20, 2013 for the tenant that he was going to show the rental unit to prospective tenants the tenant did not respond.

The landlord testified that he did not enter the unit at these times out of respect for the tenant's privacy and he thought perhaps the tenant was not planning to move out. The landlord testified that he attempted further contact with the tenant but there was no response and no keys had been left for the rental unit.

The landlord testified that on January 26, 2013 he hired a locksmith to open the rental unit door because he had lost his own master key to the rental unit and when he did have it opened he found the unit to be vacant and adequately cleaned. He states he later found the rental unit keys in the tenant's mailbox after he had the locksmith open the mailbox as well.

Analysis

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

I find the tenant did provide the landlord with a notice to end tenancy in accordance with the *Act*, stipulating he would be ending the tenancy by December 31, 2012. The fact the landlord "thought" the tenant may have changed his mind and that the landlord did not want to enter the rental unit after he had given the tenant a written notice of his intention to show the rental unit are choices the landlord made.

I find the tenant cannot be held responsible for the landlord's failure to believe that the tenant intended to vacate the property. I also find that the landlord's loss of his master key to the rental unit is also not the responsibility of the tenant and had he had his master key perhaps the landlord would have checked prior to the end of December 2012 to determine the tenant had vacated the rental property.

For these reasons, I find the landlord is not entitled to lost rent for the month of January 2013 as the lost rent resulted from the landlord's failure to take appropriate actions to determine the tenant had vacated the rental unit.

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.

As per the landlord's testimony, he received the tenant's forwarding address with the tenant's notice to end the tenancy dated November 7, 2012 and as the tenancy ended on December 31, 2012, I find the landlord had until January 15, 2013 to return the deposit or file an Application for Dispute Resolution seeking to claim against the deposit.

The landlord' submitted his Application for Dispute Resolution on March 5, 2013 and as such, I find the landlord failed to comply with Section 38(1) and the tenant is entitled to double the amount of the security deposit pursuant to Section 38(6).

Conclusion

For the reasons, noted above, I dismiss the landlord's Application in its entirety.

I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$860.00** comprised of double the security deposit.

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

As the decision above is based on the landlord's Application and not on the tenant's Application because the tenant failed to attend this hearing I dismiss the tenant's claim to recover the filing fee for his Application.

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 21, 2013

Residential Tenancy Branch

