



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNDC, MNSD, FF

For the landlord – MNR, MNSD, FF

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlord. Both files were heard together. The tenant applied for a Monetary Order for the return of the security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the landlord for the cost of this application. The landlord applied for a Monetary Order for unpaid rent; 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 and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to recover the security deposit?
- Is the tenant entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to a Monetary Order for unpaid rent?

- Is the landlord permitted to keep the security deposit?

Background and Evidence

The parties agree that this tenancy was due to start on December 16, 2012. Rent was agreed at \$850.00 per month due on the 1st of each month. The tenant paid a prorated rent for December, 2012 of \$425.00 and a security deposit of \$425.00 on December 04, 2012 when the tenancy agreement was signed by the parties.

The tenant testifies that on December 10, 2012 the landlord approached the tenant and said the tenant would not be able to move into the unit on December 16 as the landlord had relatives staying with him and the landlord needed the space. The tenant testifies that he informed the landlord that he had purchased some second hand furniture for the unit that needed to be moved into the unit. The tenant testifies that the landlord offered the tenant the use of some storage space at the landlord's office and said the furniture could be moved into the unit after Christmas.

The tenant testifies that the landlord spoke to the tenant again and said the tenant could not move into the unit until January 01, 2012. The tenant testifies that he had nowhere to live and spent Christmas in his car. The tenant testifies that as his living situation was desperate his ex wife then allowed the tenant to stay in her unit so on December 29, 2012 the tenant informed the landlord that he would not be moving into the unit.

The tenant testifies that he wrote to the landlord with his forwarding address and requested the return of the security deposit. The tenant testifies that he went to see the landlord and asked for the security deposit. The landlord offered the tenant \$200.00, and then offered \$300.00. When the tenant said he wanted all the security deposit the landlord wrote a cheque for the tenant but then tore this cheque up in front of the tenant. The tenant testifies that the landlord called the tenant two weeks ago and offered to pay

the tenant the security deposit plus the \$50.00 filing fee if the tenant dropped his case. The tenant refused to do so.

The landlord disputes the tenant's claims. The landlord testifies that he did not inform the tenant that he could not move into the rental unit on December 16, 2012. The landlord testifies that he was expecting the tenant to move in but the tenant did not do so and on December 29, 2012 the tenant called the landlord and said he was joining his wife in her apartment and would not be moving into the unit.

The landlord disputes that he wrote a cheque for the tenant and then tearing it up. The landlord testifies that when he received the tenants new address the landlord wrote to the tenant informing the tenant that as the tenant had not provided written notice to end the tenancy the landlord was keeping the security deposit as per paragraph 10 of the tenancy agreement.

The landlord seeks to recover a loss of rent for January, 2013 of \$850.00 and seeks an Order permitting the landlord to keep the security deposit to offset against this unpaid rent. The landlord testifies that he did not start to advertise the unit for rent until March, 2013 as the tenant had not given written notice. The landlord later revised this to February, 2013.

Both parties seek to recover their \$50.00 filing fee from the other party.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the tenants claim to recover the security deposit of \$425.00; I refer the parties to section 38(1) of the *Act* which says that a landlord has 15 days from the end of the tenancy agreement or from the date that the landlord receives the tenants forwarding address in writing to either return the security deposit to the tenant or to make a claim against it by applying for Dispute Resolution. If a landlord does not do

either of these things and does not have the written consent of the tenant to keep all or part of the security deposit then pursuant to section 38(6)(b) of the *Act*, the landlord must pay double the amount of the security deposit to the tenant.

Based on the above and the evidence presented I find that the landlord did receive the tenants forwarding address in writing on January 15, 2013. As a result, the landlord had until January 30, 2013 to return the tenants security deposit or apply for Dispute Resolution to make a claim against it. I find the landlord did not return the security deposit and did not file an application for Dispute Resolution to keep the deposit until April 12, 2013. Therefore even though the tenant has not applied for double the security deposit, I am required to order that the landlord must pay double the amount of the security deposit to the tenant to the amount of **\$8520.00** pursuant to section 38(6)(b) of the *Act*.

The landlord's application to keep the security deposit is therefore dismissed without leave to reapply.

With regards to the tenants claim to recover the rent paid for December, 2012 of \$425.00. The tenant argues that the landlord would not let the tenant move into the unit on the agreed upon date of December 16, 2012 so the tenant had to find alternative accommodation. The landlord argues that the tenant did not move into the unit on the date agreed and then on December 29, 2012 informed the landlord verbally that the tenant was not going to move into the unit. The burden of proving a claim lies with the applicant and when it is just the tenant's word against that of the landlords that burden of proof is not met. The tenant has not shown that the landlord breached the *Act* or tenancy agreement by failing to allow the tenant to move into the unit on December 16, 2012 and therefore forcing the tenant to find alternative accommodation. Therefore I dismiss the tenants claim to recover rent of \$425.00 without leave to reapply.

With regards to the landlords claim to recover a loss of rent for January, 2013 of \$850.00; the same burden of proof falls to the landlord in this matter and I again find

that it is one persons word against that of the other with regard to who breached the *Act* or tenancy agreement first and therefore the landlord has not met the burden of proof that the tenant breached the *Act* or tenancy Agreement by ending the tenancy without notice. I further find the landlord is required to take steps to mitigate any loss by attempting to re-rent the unit as quickly as possible. The landlord gave conflicting testimony as to when the landlord started to advertise the unit however as no advertisement was placed early in January, 2013 I find the landlord did not attempt to mitigate any loss of rent as quickly as possible. The landlord's application to recover a loss of rent is therefore dismissed without leave to reapply.

As the tenant has been partially successful with his claim I find the tenant is entitled to recover the **\$50.00** filing fee from the landlord pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the tenant's monetary claim. A copy of the tenant's decision will be accompanied by a Monetary Order for \$900.00. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord application is dismissed in its entirety without leave to reapply.

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 08, 2013

Residential Tenancy Branch

