



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNR, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income and the filing fee. The tenant applied for a monetary order for the return of double the security and pet deposits and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order? Is the tenant entitled to the return of double the security and pet deposits?

Background and Evidence

The tenancy started on April 01, 2012 for a fixed term of one year with an effective end date of March 31, 2013. The monthly rent was \$1,275.00 due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$637.50 and a pet deposit of \$50.00.

On January 30, 2013, the tenant gave the landlord written notice to end the tenancy effective February 28, 2013. The landlord reminded the tenant that he would be responsible for rent for March 2013, in the event a tenant was not found for that month.

Both parties stated that they advertised the vacancy on a popular internet website. The tenant had a few showings but a tenant was not found for March 2013. The tenant cancelled his rent cheque for March 2013. The landlord testified that a tenant was found for June 2013 and accordingly the landlord is claiming loss of income for the months of March, April and May 2013.

The tenant testified that he provided the landlord with his forwarding address in writing on February 28, 2013. When he did not receive the return of his deposits, he filed an application for dispute resolution on March 28, 2013. The tenant is claiming the return of double the security and pet deposits.

Analysis

Landlord's application:

The parties entered into a fixed term tenancy agreement on March 28, 2012 and therefore the tenant was bound by section 45(2) of the *Residential Tenancy Act*.

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term 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
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I find that the tenant gave the landlord one month's notice to end the tenancy effective February 28, 2013. Since the tenant was in a fixed term tenancy, he was ending the tenancy prior to the end date of March 31, 2013 and is therefore responsible for the loss of income suffered by the landlord.

The landlord's claim is subject to the statutory duty to mitigate the loss by attempting to re-rent the premises. Based on the testimony of the landlord I find that the landlord attempted to mitigate his losses by advertising the vacancy. Since the unit remained vacant in March, the landlord is entitled to the loss that he suffered for the month of March 2013 in the amount of **\$1,275.00**.

I further find that the landlord is not entitled to any losses of income that he suffered after the end date of the fixed term. Since the landlord has proven a portion of his claim I award him the recovery of the filing fee in the amount of **\$50.00**. Overall the landlord has established a claim of **\$1,325.00**.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security and pet deposits 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.

If the landlord fails to repay the security and pet deposits or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security and pet deposits.

In this case, the tenant moved out on February 28, 2013 and the landlord received the tenant's forwarding address on that same day. The landlord failed to return the security and pet deposits or file an application to keep it within 15 days of receiving the tenant's forwarding address in writing and therefore must return double the security and pet deposits. The landlord has in his possession \$637.50 for a security deposit and \$50.00 for a pet deposit. The landlord must return a total of **\$1,375.00**.

Since the tenant has proven his case, he is entitled to the recovery of the filing fee of **\$50.00**. Overall, the tenant has established a claim of **\$1,425.00**.

I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$100.00 which consists of difference between the established entitlements of the parties.

I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$100.00**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$100.00**.

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: June 25, 2013

Residential Tenancy Branch

