



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, MNR, 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, cost of yard work and the filing fee and to retain the security deposit in satisfaction of his claim. The tenant applied for the return of the security deposit and for the return of double the pet deposit and the filing fee.

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

The landlord stated that he had not received any evidence from the tenant. The tenant stated that she placed her evidence package in the mail box of the landlord. The tenant did not have any proof of service. Therefore I am unable to use the tenant's documentary evidence in the making of this decision.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, cost of yard work and the filing fee? Is the tenant entitled to the return of double the security deposit and the filing fee?

Background and Evidence

The tenancy started on September 01, 2012 for a fixed term of one year. The tenant gave notice to end the tenancy on February 22, 2013 and moved out on March 31, 2013. The monthly rent was \$2,100.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,000.00 and a pet deposit of \$1,050.00.

The tenant filed two copies of the tenancy agreement. She stated that the original one was signed on September 09, 2012 and was amended on February 01, 2013.

Both agreements are signed by the property manager. The landlord stated that he had not seen an amended tenancy agreement. The amendment consists of a change of the end date of the fixed term tenancy from September 01, 2013 to March 31, 2013.

The landlord also stated that in December 2012, the tenant requested by email that a second agreement be entered into with the end date of the tenancy left blank. The landlord replied asking why and the tenant did not respond. The tenant agreed to having sent the landlord this request by email. The tenant also agreed that she had in December 2012, mentioned to the landlord that she was looking to purchase a home.

The tenant stated that upon moving out she stayed with her mother for two weeks and then moved into the home that she had purchased.

Upon receipt of the notice to end tenancy, the landlord advertised the vacancy and made arrangements to show the rental unit to prospective renters. The tenant agreed that there were at least ten showings in March. Despite his efforts, the landlord was unable to find a tenant for April or May. Upon reducing the rent by \$200.00 a new renter was found for June 2013.

The landlord stated that the tenant did not maintain the yard as she was supposed to and he incurred a cost of \$450.00. The tenant agreed that she did not do a full clean up and had mowed the lawn one month prior to moving out. She stated that she left the yard in the same condition as the start of the tenancy.

The landlord is claiming loss of income for the months of April and May and \$450.00 for the yard work. The tenant is claiming the return of the security deposit and the return of double the pet deposit.

Analysis

Landlord's application:

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.

In this case the end date of the fixed term as per the original agreement was September 01, 2013. The tenant argued that the end date was amended. Based on the testimony of both parties I find that on a balance of probabilities, it is more likely than not that the landlord did not amend the tenancy agreement. Even if I accept the tenant's testimony, I am unable to use the amended tenancy agreement in the making of this decision as the tenant has not proven service of this document to the landlord and the landlord stated that he was not aware of the existence of an amended tenancy agreement. In addition, the tenant agreed that she ended the tenancy to move into her newly purchased home.

Therefore I find that the tenant breached the tenancy agreement by ending the tenancy prior to the end date of the tenancy and accordingly is responsible for the loss of income suffered by the landlord.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss. Based on the evidence in front of me, I find that the landlord made reasonable efforts to find a tenant but was unsuccessful. Accordingly, I find that the landlord is entitled to **\$4,200.00**, which is the loss that he suffered for the months of April and May 2013...

Based on the tenant's testimony, I find that the tenant did not fully clean the yard prior to moving out. I find it appropriate to award the landlord half the cost he incurred. Accordingly I award the landlord **\$225.00**.

Since the landlord has proven his case, I award him the cost of filing this application in the amount of **\$50.00**.

Tenant's application:

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.

If the landlord fails to repay the security deposit 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 deposit.

In this case, the tenancy ended on March 31, 2013 and the landlord filed his application on April 12, 2013 which is within the legislated time frame of 15 days. Therefore the tenant is not entitled to the return of double the deposit.

Since the tenant has not proven her case, she must bear the cost of filing her application.

The landlord has established a claim of \$4,475.00. I order that the landlord retain the deposit of \$1,000.00 plus the pet deposit of \$1,050.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2,425.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$2,425.00**.

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: July 05, 2013

Residential Tenancy Branch

