



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenant and the landlord. The tenant applied for recovery of the security deposit. The landlord applied for monetary compensation and an order to retain the security deposit in partial compensation of the monetary claim. The landlord and an agent for the tenant participated in the teleconference hearing.

The landlord confirmed receiving the tenant's application and evidence. The tenant's agent stated that the tenant did not receive the landlord's evidence, likely because the tenant was out of town. The landlord sent the evidence by registered mail in accordance with the Act, and I deemed the tenant served with the landlord's evidence. The tenant's agent requested an adjournment, which the landlord opposed. I declined to grant an adjournment, as the tenant was deemed served. The landlord and the tenant's agent were given full opportunity to give testimony in the hearing. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to double recovery of the security deposit?

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on August 6, 2011. The rental unit is a condo in a strata building. The monthly rent, payable in advance on the first day of each month, was \$2300. At the outset of the tenancy the tenant paid the landlord a security deposit of \$1300. On November 12, 2013 the landlord agreed to reduce the rent from \$2300 to \$2000 for the months of November 2012 to March 2013, as the tenant paid the landlord one cheque

of \$10,000. The tenancy ended at or near the end of March 2013. On May 2, 2013 the landlord sent the tenant a cheque for \$750, for partial return of the security deposit.

Tenant's Application

The tenant disputed the landlord's right to retain \$550 of the security deposit. The only portion of the deposit that the tenant agreed the landlord could keep was \$13.29 as indicated in a receipt from Rona. The tenant has therefore claimed \$1073.42, or double the amount of \$536.71, calculated as \$550 less \$13.29. The tenant acknowledged that no forwarding address in writing was given to the landlord.

Landlord's Application

The landlord stated that at the outset of the tenancy she had the tenant sign a Form K and gave the tenant a copy of the strata bylaws. However, the landlord did not provide any documentary evidence to establish that this was done, and the tenancy agreement does not make reference to an addendum, the Form K or the strata bylaws.

The landlord stated that the tenant did not give any written notice to vacate, and the landlord did not know the tenant had vacated the unit until the landlord's realtor informed the landlord on April 1, 2013 that the tenant had moved out. The landlord stated that she was aware that the tenant's friend had communicated with the landlord's realtor, but her realtor did not act as agent for the landlord regarding the tenancy, only as realtor to sell the property. The landlord's evidence shows that she returned to Canada on April 18, 2013. The landlord was unable to re-rent the unit for any part of April. The landlord claimed \$2300 for lost revenue for April 2013.

The landlord discovered that the tenant had violated a strata bylaw, and the landlord was fined \$200. The landlord also stated that one of the fobs was not returned, and she is claiming \$100 for the fob.

The tenant's response to the landlord's claim was as follows. The landlord was aware on January 31, 2013 that the tenant wanted to move out of the rental unit. The tenant gave verbal notice to the landlord's agent, the realtor, and returned one key and one fob to the realtor. The tenant admitted they refused to return one key. The tenant stated that the bylaw violation was as a result of the owner landlord's failure to put carpets on the floors.

Analysis

Tenant's Claim

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit. In this case, the tenant failed to give the landlord a forwarding address in writing. I therefore find that the tenant is only entitled to recovery of the base amount of the balance of the security deposit, \$550, less \$13.29 as acknowledged by the tenant, for a total of \$536.71.

Landlord's Claim

I find that the landlord is entitled to \$100 for a replacement fob. The tenant stated they returned one key and one fob to the realtor, but did not provide any evidence that they did so; further, the tenant acknowledged withholding one key. On a balance of probabilities, I find it more likely than not that the tenant failed to return a fob to the landlord.

I find that the landlord is not entitled to \$200 for the strata bylaw violation fine. The landlord did not provide any evidence that the tenant received a copy of the strata bylaws.

I find that the landlord is not entitled to lost revenue for April 2013. The landlord's evidence was that she was trying to sell the unit. She did not provide any evidence that she wanted or tried to re-rent the unit, and therefore she could not have suffered any lost revenue.

Filing Fees

As both applications were only partly successful, I find that neither the landlord nor the tenant is entitled to recovery of their respective filing fees.

Conclusion

The tenant is entitled to \$536.71. The landlord is entitled to \$100. I grant the tenant an order under section 67 for the balance due of \$436.71. This order may be filed in the Small Claims Court and 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: August 12, 2013

Residential Tenancy Branch