



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Harron Investments Inc
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on May 7, 2013 for:

1. A Monetary Order for compensation - Section 67;
2. An Order for return of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on May 10, 2013 for:

1. A Monetary Order for compensation – Section 67;
2. An Order to retain all or part of the security deposit – Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The Parties signed a tenancy agreement on January 15, 2013 and on January 16, 2013 the Tenant paid \$500.00 for a damage deposit on a three bedroom unit. The tenancy agreement provides that the tenancy was to start on March 1, 2013 with rent of \$1,000.00 payable monthly on the first day of each month. The Tenant was told that she could move into the unit on February 15, 2013.

The Tenant states that upon viewing the unit again on February 3, 2013 the Tenant discovered that the unit smelled musty and that their throats hurt after leaving the unit. The Tenant states that she informed the Landlord that the Tenant would not move into the unit. The Tenant states that she sent a text or made an oral request for the return of the security deposit at that time. The Tenant sent a written letter to the Landlord on February 4, 2013 stating her intention not to move into the unit. The Tenant states that this letter contains the residential address of the Tenant. The Tenant claims return of double the security deposit.

The Landlord states that there was nothing wrong with the unit and that the Landlord kept the unit open for the Tenant from January 15, 2013 to the end of February 2013. . The Landlord states that the previous tenant moved out of that unit on December 31, 2012. The Landlord states that they were willing to take a rental income loss for the period to February 15, 2013 however since the Tenant did not take the unit, they are no longer willing to take this loss. The Landlord states that the unit was advertised on craigslist and in front of the building from February 4, 2013 until a new tenant was found on February 25, 2013 for a tenancy start date of March 1, 2013. The Landlord did not provide a copy of the online advertisement. The Landlord claims lost rental income from January 15 to February 28, 2013.

The Tenant states that when she first looked at the unit, a two bedroom unit was empty above the Landlord's unit and that it had been vacant for some time. The Tenant states that the Landlord had informed the Tenant that the Landlord was "picky" about prospective tenants for this unit as it was over the Landlord's unit. The Tenant states

that she drove by the building on several occasions and that the only unit being advertised outside was the two bedroom unit.

Analysis

Section 16 of the Act provides that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Given the existence of the tenancy agreement and the payment of a security deposit, I find that a valid tenancy agreement was entered into between the Parties. Further based on undisputed evidence, I find that the tenancy was to start on February 15, 2013 and that rent became payable on February 15, 2013. Given this finding, I dismiss the Landlord's claim for rent prior to February 15, 2013.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although the Tenant believes that a request was made for return of the security deposit, given the Landlord's denial of such a request and considering that the letter ending the tenancy did not make any mention of a forwarding address for the receipt of the security deposit, I find that the Tenant did not provide a forwarding address in writing and is therefore not entitled to return of double the security deposit .

In a claim for damage or loss under the tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that a loss occurred and costs have been incurred or established, that the damage or loss claimed was caused by the actions or neglect of the responding party, and that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed. Based on the undisputed evidence that the Tenant ended the tenancy agreement immediately, I find that the Tenant ended the tenancy without sufficient notice to the Landlord. Based on the Landlord's undisputed

evidence that the unit was advertised on craigslist and that a new tenant was found for March 1, 2013, I find that the landlord acted reasonably to minimize its losses. Given the lack of notice from the Tenant to end the tenancy, I find that the Tenant caused the Landlord to lose rental income for the period February 15 to Mar 1, 2013 in the amount of \$500.00 and that the Landlord is therefore entitled to **\$500.00**. Setting the security deposit of **\$500.00** plus zero interest off this entitlement leaves nothing owed by the Tenant to the Landlord. As both the Tenant and Landlord's application has met with limited success, I decline to award either of the filing fees.

Conclusion

I order that the Landlord retain **\$500.00** from the **deposit** and interest of \$500.00 in full satisfaction of the claim

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 01, 2013

Residential Tenancy Branch