



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was sufficiently served on the landlord by mailing, by registered mail to where the landlord carries on business on June 14, 2013. I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was sufficiently served on the Tenants by mailing, by registered mail to where the tenants reside on June 24, 2013.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the Tenants are entitled to a monetary order and if so how much?
- b. Whether the Tenants are entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would commence on May 1, 2012, end on November 30, 2012 and become month to month after that. The rent is \$850 per month payable on the first day of each month. The tenant(s) paid a security deposit of \$425 and a pet damage deposit of \$100 at the start of the tenancy.

The tenants experienced problems with bedbugs and other pests. The landlord sent in a pest control contractor but the problems persisted.

On April 6, 2013 the tenants gave the landlord notice in writing that they were ending the tenancy effective April 30, 2013.

The representative of the landlord testified the tenants did not return the keys until May 13, 2013 and they were in and out remediating the rental unit. The tenants deny this. They testified they returned the keys on April 30, 2013. However, after being informed the landlord was not going to return the security deposit they, with the consent of the building manager return in early May and completed repairs ending on May 4, 2013.

The tenants testified they provided the landlord with their forwarding address in writing on April 30, 2013 as the landlord wrote it on the Post Tenancy Condition Inspection Report. The representative on the landlord testified he was advised that the tenants did not provide the landlord with their forwarding address. However, the landlord provided the tenants with a cheque in the sum of \$125 sometime prior to June 14, 2013 (the date the tenants filed the Application for Dispute Resolution). The agent stated that she has viewed the Condition Inspection Report and it indicates that the landlord wrote down the tenant's forwarding address.

Tenant's Claim:

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$425 and a pet damage deposit of \$100 for a total of \$525 at the start of the tenancy. I determined the tenancy ended on April 30, 2013. I further determined the tenants provided the landlord with their forwarding address in writing on April 30, 2013. The conduct of the landlord in mailing a cheque to the tenants prior to June 14, 2013 is evidence that the landlord had the tenant's forwarding address in writing. The representative of the landlord was not present in the rental unit on April 30, 2013 and does not have personal knowledge of whether the forwarding address was provided.

The parties have not agreed in writing that the landlord can retain the security deposit. The landlord does not have a monetary order against the tenants and the landlord failed to file an Application for Dispute Resolution within the 15 days from the later of the end of tenancy or the date the landlord receives the tenants' forwarding address in writing. The landlord returned \$125 of the deposit(s) in early June. As a result I determined the tenants have established a claim against the landlord for double the security deposit/pet deposit less the sum that was returned ($\$525 \times 2 = \$1050 - \$125 = \925).

Monetary Order and Cost of Filing fee

In summary I determined the tenants have established a claim against the landlord in the sum of \$925 plus \$50 for the cost of the filing fee for a total of \$975.

Landlord's Claim::

Analysis - Monetary Order and Cost of Filing fee

The Residential Tenancy Act provides that where a tenant wishes to end a month to month tenancy, the tenant must give the landlord a clear month written notice on or before the end of the rental payment period to be effective at the end of the ensuing rental payment period. The Act self-corrects a notice with an incorrect date. The tenants gave the landlord written notice on April 6, 2013. That Notice was not effective until May 31, 2013.

It is possible for a tenant to end a tenancy early under section 45(3) of the Residential Tenancy Act if the landlord has breached a material term of the tenancy agreement. However, in order to do so the tenants must give the landlord written notice of the breach and a reasonable opportunity to rectify the breach. It is not necessary for me to consider whether the failure of the landlord to resolve the bedbug problem amounted to a material breach as the tenants failed to give the landlord notice of this breach and a reasonable time to rectify the breach.

The landlord has an obligation to mitigate its loss. I determined the landlord has acted reasonably. The rental unit was advertised through the internet. A new tenant was found in before the middle of May and that person took possession on June 1, 2013. I determined the landlord has established a claim against the tenants in the sum of \$850 for loss of rent for May plus \$50 for the cost of the filing fee for a total of \$900.

I do not accept the submission of the agent for the tenant's that the landlord is precluded from making this claim for loss of rent because it wasn't raised at the time the tenancy ended. At that time the building manager only raised the issue of damage to the rental unit. There is nothing in the Residential Tenancy Act or common law that prevents the landlord from bringing the within claim.

Conclusion:

I determined the tenants have established a claim against the landlord in the sum of \$975. I determined the landlord has established a claim against the tenant in the sum of \$900. After setting off one claim against that of the other I ordered that the landlord pay to the tenants the sum of \$75.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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

