



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MNR, MNDC

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The tenant's application is a request for a Monetary Order for \$1100.00 and recovery of the \$50.00 filing fee.

The landlord's application is a request for a Monetary Order for \$794.53, a request to retain the security deposit towards the claim, and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Is the tenant entitled to a Monetary Order for \$1100.00?

Is the landlord entitled to a Monetary Order for \$794.53?

Background and Evidence

The tenant testified that:

- On May 11, 2013 she got a text message from the landlord stating that there was a letter on the shared washing machine for her to read.
- She obtained a letter from the washing machine and found that it was a request from the landlord that she vacate the rental unit by July 1, 2013.
- The letter also stated “if you find something sooner I will understand and appreciate your understanding”.
- She did find something sooner, and therefore on May 22, 2013 she left a letter for the landlord stating that she would be vacating the rental unit by the end of the month, and giving her forwarding address to the landlord.
- She vacated the rental unit May 31, 2013, however the landlord did not return her security deposit and therefore on June 19, 2013 she applied for dispute resolution to get an order for the landlord to return double the deposit.
- She also believes that the landlord should be paying her one month compensation, as the notice was given for landlord use, stating that her daughter was moving into the rental unit.
- The landlord did not do a move-in inspection report at the beginning of the tenancy, nor did she do a move out inspection report at the end of the tenancy, and in fact neither was even offered.
- The rental unit was left totally cleaned when she vacated.

Therefore the total amount she is requesting is as follows:

Return of security deposit double	\$500.00
One month's rent as compensation	\$600.00
Filing fee	\$50.00
Total	\$1150.00

The landlord testified that:

- She believes the tenant should be paying rent for the month of June 2013, because the tenant did not give the required Notice to End Tenancy.
- She did ask the tenant to vacate by July 1, 2013, and she did state that she that she would understand if the tenant found something earlier, however she still expected proper notice.
- She did not do the move-in inspection report as she was living in Mexico at the time that the tenant moved into the rental unit, and she did not do the move out inspection report, as the tenant had not given the required Notice to End Tenancy.
- The tenant also left the rental unit in need of cleaning at the end of the tenancy, and as a result she had to have the rental unit cleaned, and had to clean the carpets.

She therefore believes that the tenant's application should be dismissed, and that a Monetary Order should be issued as follows:

June 2013 rent	\$600.00
Cleaning	\$162.50
Carpet cleaning	\$32.00
Filing fee	\$50.00
Total	\$844.50

Analysis

It is my finding that although the landlord did not give the proper two month Notice to End Tenancy, she did request that the tenant vacate the rental unit, and she did state that she would understand if the tenant vacated earlier; therefore I will not allow the landlords claim for June 2013 rent.

I find that the tenant gave reasonable notice to the landlord that she would be vacating earlier than the July 1 requested date, and therefore the tenant does not owe rent for the month of June 2013. I fail to see how the landlord can expect the tenant to give proper notice, when she herself didn't give proper notice to end the tenancy.

It is also my finding that the landlord has not met the burden of proving that the tenant left the rental unit in need of cleaning, because since there were no move-in or move out inspection reports it's just her word against that of the tenants and that is not sufficient to meet the burden of proof.

The burden of proving a claim lies with the applicant and when it is just the applicant's word against that of the respondent that burden of proof is not met.

Having denied the landlords full claim I will also not allow the claim for recovery of the landlords filing fee.

It is also my decision however that I will not allow the tenants claim for one month compensation, as the landlord never did give the tenant a two month Notice to End Tenancy in the proper government form. Compensation is only required if the landlord has given that two month Notice to End Tenancy.

I will however allow the tenants claim for double the security deposit. The Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord does not have the tenant's written permission to keep the security deposit, has not returned the tenants security deposit, and did not apply for dispute resolution within the required time limit.

This tenancy ended on May 31, 2013 and the landlord has admitted that she had a forwarding address in writing by May 23, 2013, and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the \$250.00 amount of the security deposit to the tenant, for a total of \$500.00.

I also allow the tenants request for recovery of the \$50.00 filing fee.

Conclusion

The landlord's application is dismissed in full without leave to reapply.

I have allowed \$550.00 of the tenant's application, and have issued a Monetary Order in the amount. The remainder of the tenant's application is dismissed without leave to reapply.

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: September 30, 2013

Residential Tenancy Branch