



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNR, MNDC, FF

Introduction

This hearing was convened in response to cross-applications by the parties for dispute resolution. The tenant filed on August 20, 2013 pursuant to the *Residential Tenancy Act* (the Act) for Orders as follows:

1. An Order for return of security deposit - Section 38

The landlord filed on August 13, 2013 for Orders as follows;

1. A monetary Order for loss – section 67
2. An Order to retain the security deposit - Section 38
3. An Order to recover the filing fee for this application (\$50) - Section 72.

Both parties attended the hearing and were given opportunity to settle their dispute, present relevant evidence, and make relevant submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties each acknowledged receiving all the evidence of the other. The parties were apprised that only relevant evidence will be considered in the Decision.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Is the tenant entitled to the monetary amounts claimed?

The burden of proof is on the respective parties to prove their respective claims.

Background and Evidence

The *relevant* evidence in this matter is as follows. The tenancy began as a written fixed term tenancy agreement ending August 31, 2013. A copy of the contractual agreement

signed by the parties was submitted into evidence. At the outset of the original tenancy the landlord had collected a security deposit in the amount of \$850.00 representing 2 security deposits each of \$425.00 from the original 2 tenants. The landlord currently still holds \$425.00 in trust. The other original tenant of this tenancy provided the landlord with their written agreement that the landlord could retain their security deposit for an obligation to the landlord other than for damages.

The parties agree there was no *move in* and *move out* mutual condition inspections conducted. It is undisputed the tenants vacated June 26, 2013 pursuant to notifying the landlord by sending the landlord an e-mail on May 15, 2013 that they were both vacating at the end of June 2013, at which time the tenant also provided their forwarding address. Despite the tenants not providing legal Notice to End the tenancy in accordance with the Act, the landlord accepted the e-mail Notice to End and acted on it as valid Notice to End and acted to mitigate losses of revenue for July 1, 2013. It is further undisputed that both the tenant and the landlord acted to mitigate losses of rent for July 2013, by each advertising the availability of the rental unit beginning in early June 2013. Both parties provided document evidence of their respective efforts to re-rent the unit for July 2013. The landlord and tenant provided document evidence and testimony of their respective efforts including a failed proposal to sublet the unit, and the landlord's use of a professional rental agent. The evidence is that the landlord was subsequently successful in re-renting the unit for August 2013.

The tenant requests the return of the security deposit, and the landlord seeks loss of revenue solely for the month of July 2013 in the amount of \$425.00.

Analysis

The onus is on the respective parties to prove their claims. On preponderance of all the relevant evidence submitted and on balance of probabilities, I find as follows:

Tenant's claim

Section 38(1) of the Act, in relevant part, provides as follows

- 38(1)** Except as provided in subsection (3) or (4) (a), within 15 days after the later of
- 38(1)(a) the date the tenancy ends, and
 - 38(1)(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord **must** do one of the following:

- 38(1)(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
 - 38(1)(d) file an application for dispute resolution to make a claim against the security deposit or pet damage deposit.
- and,

38(6) If a landlord does not comply with subsection (1), the landlord

- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
- 38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find that the landlord failed to repay the remaining security deposit of \$425.00, or to make an application for dispute resolution within 15 days of the end of the tenancy – having already received the tenant's forwarding address in writing - and is therefore liable under section 38(6) which provides:

38(6) If a landlord does not comply with subsection (1), the landlord

- 38(6)(a) may not make a claim against the security deposit or any pet damage deposit, and
- 38(6)(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

The landlord currently holds a security deposit of \$425.00 and was obligated under section 38 to return this amount. The amount which is doubled is the \$425.00 amount of the deposit being held. As a result I find the tenant has established an entitlement claim for **\$850.00**

Landlord's claim

Based on the testimony of the parties, and on preponderance of their submitted document evidence, I find that while the Act requires that a tenant must give a Notice to End a tenancy only in accordance with the Act, the Act does not attach a penalty for failing to do so or automatically entitles the landlord to future rent. In this matter, the parties had a fixed term tenancy agreement to August 31, 2013, which the tenant ended earlier than originally contracted. There is no provision in the Act whereby tenants who

vacate without providing the required legal Notice or breach the contractual agreement by vacating earlier than the contractual agreement will be automatically held liable for any loss of rent or revenue for the months following. However, Section 7 of the Act does provide as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

An application for loss must meet the above test. It is clear the tenant did not provide their Notice to End as prescribed by the Act nor in respect to a fixed term tenancy by ending the tenancy earlier than was contractually agreed, thus satisfying the test required and established by Section 7(1). None the less, the landlord accepted the notice and accepted the tenancy was ending at the end of June 2013 and soon after receiving the tenant's e-mail acted to mitigate any potential losses of revenue after the tenancy would end. I find that both parties provided sufficient evidence that the landlord made reasonable efforts to re-rent the unit for July 01, 2013. As a result, I find the landlord has provided sufficient evidence they acted reasonably to mitigate or minimize their losses. I am satisfied that the landlord has met the test established by Section 7(2), and I therefore grant the landlord's claim for loss of revenue in the amount of **\$425.00**. As the landlord was partially successful in their application they are entitled to recover their filing fee of **\$50.00** for a total entitlement award of **\$475.00**.

Therefore: *Calculation for Monetary Order,*

tenant's security deposit to tenant	\$425.00
double security deposit to tenant	\$425.00
<i>landlord's award</i>	<i>-\$425.00</i>
<i>landlord's filing fee</i>	<i>-\$ 50.00</i>
Total monetary award for tenant	\$375.00

Conclusion

The parties' respective applications have been granted and offset by their respective entitlements.

I grant the tenant a Monetary Order under Section 67 of the Act for the amount of **\$375.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: November 19, 2013

Residential Tenancy Branch

