



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord seeks a monetary order for unpaid rent, to keep all of the security deposit and recovery of the filing fee. The Tenant has also made an application for a monetary order for the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence of the other party, I am satisfied that both parties have been properly served.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?
Is the Landlord entitled to keep the security deposit?
Is the Tenant entitled to a monetary order?

Background and Evidence

Both parties agreed that there was a signed tenancy agreement, but that neither party had submitted a copy. Both parties agreed that there was a \$437.50 security deposit paid currently held by the Landlord.

The Landlord seeks a monetary order for \$1,862.50. This consists of unpaid rent/loss of rental income of \$1,350.00 for June 2013, \$437.50 to keep the security deposit and recovery of the \$50.00 filing fee. The Landlord states that he suffered a loss of rental

income because the Tenant vacated the rental unit on June 1, 2013. The Tenant disputes this stating that she vacated the rental unit on May 31, 2013 and met with the Landlord on June 1, 2013 at his request to conduct a condition inspection report for the move out. The Landlord has stated that he was notified by the Tenant in a letter dated April 24, 2013 of the Tenant's intention to vacate the rental unit on June 1, 2013. The Tenant confirms the contents of the letter, but states that after warning from the Landlord vacated the rental unit on May 31, 2013. The Tenant disputes this claim stating that she complied with the Landlord's wish to meet on June 1, 2013. The Landlord stated in his direct testimony that he immediately began advertising the rental unit, but did not provide any details other than to state that he advertised the unit for rental.

The Landlord states that the Tenant vacated the rental unit on June 1, 2013. The Tenant disputes this stating that she vacated the rental unit on May 31, 2013 and that a condition inspection report for the move-out was started on June 1, 2013, but not completed. The Tenant states that the inspection date was selected at the request of the Landlord. The Landlord confirms that the Tenant failed to complete the condition inspection report for the move-out and left without providing a forwarding address in writing. Both parties confirmed in their evidence that both parties met on June 1, 2013 to complete a condition inspection report. The Landlord submitted a copy of written request for a condition inspection report to be completed for the move-out on June 1, 2013 at either 1pm or 2pm. The Landlord also submitted a copy of the Tenant's written response selecting June 1, 2013 at 2pm. The Landlord states that the Tenant left before the completion of the inspection due to a disagreement on the contents of the report and did not provide a forwarding address in writing. The Tenant did not dispute this.

The Tenant seeks a monetary order for \$875.00 which is the return of double the \$437.50 security deposit for failing to comply with the Act. Both parties agreed that the Tenant provided her forwarding address in writing on June 17, 2013 in a letter requesting the return of the \$437.50 security deposit. The Landlord's Application was filed for dispute on July 2, 2013 on the 15th day after receiving the Tenant's forwarding address in writing.

Analysis

In Review of Section 36 of the Residential Tenancy Act, it states,

Consequences for tenant and landlord if report requirements not met

36 (1) The right of a tenant to the return of a security deposit or a pet damage deposit, or both, is extinguished if

(a) the landlord complied with section 35 (2) *[2 opportunities for inspection]*, and

(b) the tenant has not participated on either occasion.

(2) Unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the landlord

(a) does not comply with section 35 (2) *[2 opportunities for inspection]*,

(b) having complied with section 35 (2), does not participate on either occasion, or

(c) having made an inspection with the tenant, does not complete the condition inspection report and give the tenant a copy of it in accordance with the regulations.

I find that the Landlord has not established grounds that the Tenant has extinguished her rights to the return of the security deposit. It could be argued that the tenant DID participate in the move-out condition inspection, even while she may not have either stayed around for as long as the landlord would have preferred, OR simply declined to sign the move-out condition inspection report. In my mind, the tenant's conduct does not equate to the tenant's loss of right to return of the security deposit.

Further, it could also be argued that the landlord's right to retain the security deposit was extinguished if, indeed, he did not complete the move-out condition inspection report AND give the tenant a copy of it. From what both parties reported, the landlord did not complete the report AND I presume he didn't give the tenant a copy. The Landlord's claim that the Tenant has extinguished her right to the return of the security deposit is dismissed.

The Landlord's claim for loss of rent of \$1,350.00 for June 2013 has not been established. The Landlord stated in his direct testimony that the Tenant vacated the rental unit on June 1, 2013, but that the Tenant disputes this stating that she had already vacated the rental unit on May 31, 2013 and met with the Landlord on June 1, 2013 at their request to complete a move-out inspection. The Tenant relies on a written request by the Landlord suggesting the June 1, 2013 date with a 1pm or 2pm option for the move-out inspection. The Landlord has not provided sufficient evidence to satisfy me that the Tenant over-held the rental unit. I find that I prefer the evidence of the Tenant over that of the Landlord in this case and the Landlord's claim for loss of rental income is dismissed.

As for the Tenant's claim for the return of double the security deposit, I find that the Tenant has failed. Both parties confirmed in their direct testimony that the Tenancy ended on May 31, 2013/June 1, 2013. The Tenant provided her forwarding address in writing to the Landlord on June 17, 2013. The Landlord applied for dispute resolution to retain the security deposit on July 2, 2013.

Section 38 of the Act speaks to the return of a security deposit and states,

38 (1) Except as provided in subsection (3) or (4) (a), **within 15 days after the later of**

(a) **the date the tenancy ends, and**

(b) **the date the landlord receives the tenant's forwarding address in writing,**

the landlord must do one of the following:

(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;

(d) **make an application for dispute resolution** claiming against the security deposit or pet damage deposit.

I find that the Landlord has complied with the Act by applying for dispute resolution on July 2, 2013 after receiving the Tenant's forwarding address in writing on June 17, 2013 which is 15th day after receiving it. The Tenant's application for return of double the security deposit is dismissed.

The Landlord is still in possession of the original \$437.50 security deposit and as such, I order that the Landlord return the \$437.50. The Tenant is entitled to recovery of the \$50.00 filing fee. I grant a monetary order for the Tenant for \$487.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord's application is dismissed.

The Tenant is granted a monetary order for \$487.50.

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: January 22, 2014

Residential Tenancy Branch

