



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNSD, MNDC, FF
Tenant: MNDC, MNSD

Introduction

This hearing dealt with cross Applications for Dispute Resolution with both parties seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenant is entitled to a monetary order for compensation for failure of the landlord to return the tenant's personal property; and return of the security deposit n, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on June 30, 2010 as a month to month tenancy for a monthly rent of \$700.00 due on the 1st of each month with a security deposit of \$350.00 paid. The tenancy ended on August 25, 2013.

The landlord submits that the tenant's husband assaulted the landlord's daughter while she was staying in the landlord's home while the landlord was out of the country. This issue has not yet been before the courts. As a result the landlord's son issued the tenant a 24 hour notice of eviction. The tenant vacated the rental unit and the tenancy ended.

The landlord seeks compensation for lost revenue from the rental unit for the months of September and October 2013. The landlord submits they started advertising the rental unit online in December 2013.

The tenant submits that when she came to the rental unit to move out her belongings the landlord's son was there and told her that she had better take everything at that time because she would not be welcomed back for anything left behind.

The tenant submits that they took as much as they could with the limited resources she had but that she left behind a futon; a computer; speakers; a stereo; 2 lamps. The landlord testified that there were also bedrails and a TV stand left behind. The tenant seeks compensation in the amount of \$500.00.

The tenant has provided photographic evidence of the belongings left behind. She states that she has valued the items based on what she believes she would receive for them if she were to sell them. The landlord confirmed that her son removed all of the tenant's belongings and took them for disposal.

The tenant also seeks return of her security deposit. She states she provided the landlord with her forwarding address by registered mail on October 20, 2013. The landlord submitted her Application to retain the deposit on October 30, 2013.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

While I accept that the tenant allowed someone in her rental unit who may have committed an illegal activity, which may have given the landlord grounds to end the tenancy, in accordance with the *Act*, I also note that the remedy for the landlord was to end the tenancy – which the landlord did in a manner contrary to the *Act*.

Once the landlord forced the tenant to move out of the rental unit without consideration of the *Act*, I find the tenancy ended and the landlord was no longer entitled to any rent from the tenant. I also note that had the landlord followed the *Act* in ending the tenancy she would have likely received rent for the month of September 2013 because she would have had to have issued a 1 Month Notice to End Tenancy for Cause that would take effect on September 30, 2013.

Even if the landlord were entitled to compensation for lost revenue it would be subject to her obligation to mitigate. Since the landlord did not start advertising the availability of the rental unit until December 2013, I find that the landlord failed to take any steps toward mitigation and again would be unsuccessful in her claim.

In relation to the tenant's claim for return of her security deposit, as the landlord has failed to make a successful claim against the deposit I find the tenant is entitled to the return of the deposit.

Based on the undisputed testimony that the tenant left personal property and the photographic evidence of that property I find the tenant is entitled to compensation for the landlord's act of discarding her possessions. I am satisfied, based on the photographs, that the value the tenant has attributed to the property is reasonable.

Conclusion

For the above noted reasons I dismiss the landlord's Application in its entirety.

Also based on the above, I find the tenant is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$850.00** comprised of \$350.00 security deposit and \$500.00 as compensation for her personal property..

This order must be served on the landlord. If the landlord fails to comply with this order the tenant may file the order in the Provincial Court (Small Claims) and be 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: January 28, 2014

Residential Tenancy Branch

