



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, the filing fee and to keep the security deposit in satisfaction of his claim. The tenant applied for a monetary order for the return of double the security deposit, for the cost of mailing and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to keep the security deposit in partial satisfaction of his claim for loss of income and the filing fee? Is the tenant entitled to the return of double the security deposit, mailing costs and the filing fee?

Background and Evidence

On September 06, 2013, the tenant viewed the rental unit, agreed to rent it effective October 01, 2013 and paid a security deposit of \$600.00. The agreement was not documented.

The tenant that occupied the rental unit in September 2013, agreed to move out on September 27, to give this tenant a few extra days to move in. The tenant testified that she arrived at the rental unit on September 28, 2013 along with her belongings. An arrangement was made by the parties for the tenant to obtain the keys. The tenant stated that upon entering the property, she found that the unit was extremely dirty and uninhabitable and therefore she decided not to move into the rental unit.

The parties met on September 29, 2013 and the tenant requested the return of her security deposit. The landlord refused to return the deposit and filed an application to keep it towards the loss of income he suffered. The landlord started showing the unit immediately and found a tenant for October 15, 2013.

The tenant stated that the landlord had promised not to cash the security deposit cheque until a walk through was completed and she moved into the rental unit. The tenant also testified that the landlord made promises to paint and do some work inside the unit which he failed to do. The yard was full of dog feces, the house had a pet odour and the floors were dirty. The tenant filed photographs to support her testimony.

The landlord responded by saying that the unit was renovated a year ago and the house did not have an odour. He also stated that he did not tell the tenant that he would refrain from cashing the security deposit cheque until the walk through was completed. The landlord testified that the new tenant who viewed the unit on October 01 agreed to rent it and did not complain about the condition of the unit or any odour present inside the unit.

Analysis

Landlord's application:

Section 16 of the *Residential Tenancy Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. The parties entered into a tenancy agreement on September 06, 2013 at which time the tenant paid the security deposit. Even though there was no document signed by both parties regarding the terms of the agreement, the rights and obligations of both parties took effect that date, even though the tenant never moved in. Once the security deposit is paid, the tenancy is considered started. Accordingly, the tenant is obliged to give the landlord one month's notice to end the tenancy and the landlord is entitled to rental income for that month.

In this case, the tenant entered into a tenancy agreement, but failed to give the landlord adequate notice to end the tenancy. The landlord made efforts to mitigate his losses by showing the suite and was able to find a tenant for October 15, 2013. This resulted in a loss of income to the landlord for the period of October 01-15.

Residential Tenancy Policy Guideline #3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Therefore, I find that the landlord is entitled to the income that he lost for part of the month of October 2013, in the amount of \$600.00. The landlord has proven his case and therefore I find that the landlord is entitled to the filing fee of \$50.00.

Tenants' application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

In this case, the tenant informed the landlord on September 29, 2013 that she would not be moving in. The landlord filed his application on October 11, 2013 which is within the legislated time frame of 15 days. Therefore the tenant is not entitled to the return of double the security deposit but is entitled to the return of the base amount of \$600.00.

The tenant also applied for the recovery of mailing costs. The legislation does not permit me to award any litigation related costs other than the filing fee. Since the tenant has not proven her case, she must bear the cost of filing her application.

The landlord has established a claim of \$650.00 while the tenant has established a claim of \$600.00. I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$50.00 which consists of the difference between the established claims of both parties. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$50.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security deposit. I grant the landlord a monetary order for \$50.00. The tenant's application is dismissed in its entirety.

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 14, 2014

Residential Tenancy Branch

