



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord: MNSD, FF
Tenant: MNSD, FF

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 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 return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The parties agree the tenancy began on April 1, 2010 as a month to month tenancy for a monthly rent of \$875.00 due on the 1st of each month with a security deposit of \$440.00 paid on March 20, 2010.

The tenancy ended on September 28, 2013. The parties agree the tenant had provided the landlord with a notice via text message on August 30, 2013 indicating that the tenant confirmed "that this will be my last month there....thanks".

The parties both provided a copy of another text message dated September 14, 2013 that states that he and his girlfriend have decided to move out by October 15, 2013. The text message goes on to say that the tenant wanted the landlord to know so this text would be his month's notice and that he will be back in town on September 24, 2013 to start packing.

The tenant testified that he had to change his move out date because he did not believe that he could time off work from his job in another province to move out by the end of September 2013. He states he later called the landlord and told her verbally that he would still be moving out before the end of September 2013.

The parties also agree the tenant paid a deposit of \$135.00 for an entry access fob. The parties acknowledge that during the tenancy the tenant obtained from the strata an additional fob for \$125.00. The parties agree the need arose when the tenant thought he had lost the original fob. However, at the end of the tenancy the tenant returned both fobs to the landlord.

The landlord submits that she returned to the tenant \$210.00 representing the return of the amounts for both fobs totalling \$260.00 less \$50.00 for a move out fee. The landlord seeks to retain the full security deposit of \$440.00 for lost revenue for the partial month of October, 2013.

The landlord submits that she feels that the second amount for fobs was not a deposit but rather a purchase that the tenant made because he had lost the original fob and she had no need for an additional fob.

Analysis

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 52 of the *Act* stipulates that for a notice to end tenancy issued by the tenant to be effective the notice must be in writing; be signed and dated by the tenant; give the address of the rental unit and state the effective date of the notice.

Section 88 states that all documents that are required or permitted under the *Act* to be given or served on a person must be given or served:

- a) By leaving a copy with the person;
- b) If the person is a landlord, by leaving a copy with an agent of the landlord;
- c) By sending a copy by ordinary or registered mail to the address at which the person resides or, if the person is a landlord to the address at which the person carries on business as a landlord;
- d) If the person is a tenant, by sending a copy by ordinary mail or registered mail to a forwarding address provided by the tenant;
- e) By leaving a copy at the person's residence with an adult who apparently resides with the person;

- f) By leaving a copy in a mail box or mail slot for the address at which the person resides or, if the person is a landlord, for the address at which the person carries on business as a landlord;
- g) By attaching a copy to a door or other conspicuous place at the address at which the person resides or, if the person is a landlord, at the address at which the person carries on business as a landlord;
- h) By transmitting a copy to a fax number provided as an address for service by the person to be served;
- i) As ordered by the director under Section 71(1);
- j) By any other means of service prescribed in the regulations.

As such, the requirement for the Notice to be in writing can be satisfied by issuing the landlord a text message, the *Act* requires that it be given or served to the landlord in a method that does not include text message as noted under Section 88. However, having said that if the parties show a pattern of communicating through text messaging I accept that a Notice may be served by text message.

In the case before me I find the tenant provided a Notice by text message on August 30, 2013. However, I find that this Notice is deficient in the content required to constitute a tenant's notice to end tenancy, specifically there is no address; no vacancy date; and it is not signed by the tenant. As such, I find this notice is not compliant with the *Act*.

From the continued text message conversations, however, I am satisfied that both parties were aware of the intent of the tenant to end the tenancy. As to the date intended to be the end of the tenancy, I find that once a notice to end tenancy has been provided to a landlord by a tenant the tenant cannot unilaterally change the end date of the tenancy, as attempted by the tenant in his September 14, 2013 text message.

However, despite the tenant's submission that he had called the landlord and advised her that his employer had allowed him time off to come back and move out prior to the end of September 2013 I find the conflicting effective dates impacted the landlord's ability to re-rent the unit for the beginning of October 2013. I find the landlord is entitled to her claim of ½ month's rent or the value of the security deposit.

Section 19 of the *Act* limits the amount a landlord can collect as a security deposit to the equivalent of ½ month's rent and as the rent in this tenancy was \$875.00 the maximum security deposit the landlord should have collected was \$437.50. As such, I order the landlord must return \$2.50 from the deposit.

In relation to the fob deposits, I find that when a landlord collects a deposit on an access key or fob the intention of the deposit is to protect the landlord from any loss or damage of the fob. As the tenant, during the tenancy, identified that he had lost the original fob it was the landlord's obligation to provide him with an additional fob, at no cost.

If however, at the end of the tenancy the tenant failed to return the 2nd fob the landlord may have been entitled to claim compensation from the fob deposit for failure to return

the fob. As such, by making the tenant “pay” for the 2nd fob I find the landlord actually charged a second fob deposit. Therefore, the landlord was required to return both fob deposits to the tenant, in full at the end of the tenancy, when he returned both fobs.

As to the landlord’s retention of \$50.00 for a move out fee from the fob deposits, I find that since she did not apply to retain such a fee in her Application for Dispute Resolution and she has provided no evidence in this hearing that one was required I find that she was not entitled to withhold this amount from any monies returned to the tenant.

For the sake of clarity I summarize my findings below:

Award	Amount
Landlord – rent	\$437.50
Tenant – return of both fob deposits	\$260.00

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$487.50** comprised of \$437.50 rent owed and the \$50.00 fee paid by the landlord for this application. I order the landlord may deduct the security deposit and interest held in the amount of \$440.00 in partial satisfaction of this claim, leaving a balance owed to the landlord of **\$47.50**.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$100.00** comprised of \$50.00 for withheld portion of fob deposits and the \$50.00 fee paid by the tenant for this application. I grant a monetary order to the tenant in the amount of **\$52.50**.

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: February 05, 2014

Residential Tenancy Branch

