



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MNDC MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to sections 45 and 67 for rental loss due to breach of a fixed term lease plus utility arrears and damages to the property;
- b) To retain the security deposit to offset the amount owing; and
- c) An order to recover the filing fee pursuant to Section 72.

This hearing also dealt with an application by the tenant for orders as follows:

- d) to recover double the security deposit pursuant to section 38;
- e) compensation for a portion of the utility bill; and
- f) to recover the filing fee pursuant to section 72.

SERVICE

Both parties attended and agreed they received each other's Applications for Dispute Resolution by registered mail. I find that the parties are served with the Applications according to section 89 of the Act.

Issue(s) to be Decided:

Has the landlord has proved on a balance of probabilities that the broke a fixed term lease, failed to pay utilities and did some damages, that were beyond reasonable wear and tear and the costs incurred? Is the landlord entitled to recover the filing fee?

Has the tenant proved on a balance of probabilities that they are entitled to compensation for a portion of the utility bill, to recover double the deposit and the filing fee?

Background and Evidence:

Both parties attended the hearing and were given opportunity to be heard, to present evidence and to make submissions. It is undisputed that the tenancy was a fixed term

tenancy which commenced in March 15, 2013 and was to expire on April 1, 2014. It is undisputed that monthly rent was \$1400 plus 70% of utilities and a security deposit of \$700 was paid on March 1, 2013. It is undisputed that the tenant gave written notice and vacated the property on February 28, 2014 and the landlord tried to re-rent the property. However, the landlord said repair and cleaning were required so she was unable to re-rent until April 1, 2014 which caused her \$1400 for one month rental loss.

The landlord claimed rental loss, unpaid utilities and damages totalling \$3,109.82. However, she agreed to settle all monetary claims for retention of the security deposit of \$700. She said it was too difficult in her experience to collect money afterwards.

Before the tenant accepted the offer, he said he had verbal permission to move out early and he had many problems with the tenancy which caused him to move. After discussion of liability pursuant to a fixed term lease under section 45 of the Act, the tenant agreed to accept the landlord's offer.

Settlement Agreement:

- 1. The landlord agrees that she will accept the security deposit of \$700 to settle all claims for unpaid rent, utilities and damages to the property.**
- 2. The tenant agrees the landlord may retain the security deposit in full settlement.**
- 3. This agreement settles all matters between the parties in respect to this tenancy.**

On the basis of the documentary and solemnly sworn evidence, a decision has been reached.

Analysis

Monetary Order

Pursuant to the above noted settlement, I find the landlord may retain the \$700 security deposit as full settlement of this matter.

As discussed with the tenant in the hearing, section 45 (2) (b) of the Act provides that a tenant cannot give a written notice which ends the tenancy before the end of the term. Some landlords agree tenants can leave early without liability provided they can re-rent the unit without rental loss but this does not waive the liability of the tenant to pay rent until the end of the term, unless and until the landlord can re-rent. According to the evidence, this was what this landlord thought she had communicated to the tenant and he had nothing in writing from the landlord to allow him to end the tenancy early without incurring liability for rent until the end of the term.

Although the tenant noted several difficulties with the tenancy, he did not bring Application for Dispute Resolution during the tenancy to either end the tenancy early, or to have the situation corrected or to obtain a rebate of rent if the tenancy was devalued by the problems.

In respect to the doubling of his security deposit, his tenancy did not end until April 1, 2014 per the written agreement and the landlord filed her Application to claim against it on April 16, 2014 which is within the 15 days permitted under section 38 of the Act to avoid the doubling provision. Under this provision, I would not have found him entitled to double his deposit if the matter had not been settled.

Conclusion:

I find the landlord is entitled to retain the security deposit in full settlement of all matters in these applications including the filing fee.

I dismiss the application of the tenant and find him not entitled to recover the filing fee as inclusion of the filing fees were part of the settlement.

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: June 12, 2014

Residential Tenancy Branch

