



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

Landlord's application (filed March 20, 2014): MNR, FF

Tenant's application (filed March 24, 2014): MNSD, FF

Introduction

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for unpaid rent and to recover the cost of the filing fee from the Tenant.

The Tenant filed an Application for Dispute Resolution seeking return of the security deposit and to recover the cost of the filing fee from the Landlord.

The parties gave affirmed testimony at the Hearing.

It was determined that the parties served each other with their respective Notice of Hearing documents.

Issues to be Decided

1. Is the Landlord entitled to a monetary award for rent for the months of February, 2014?
2. Is the Tenant entitled to return of the security deposit?

Background and Evidence

This tenancy began on September 5, 2013. Monthly rent was \$575.00, due on the first day of the month. The Tenant paid a security deposit in the amount of \$288.00 at the beginning of the tenancy.

The Landlord testified that the Tenant sent the Landlord a text message on January 5, 2014, stating that he was moving out of the rental unit effective February 1, 2014. The Landlord re-rented the rental unit on March 1, 2014. The Landlord submitted that the Tenant did not give valid notice to end the tenancy.

The Tenant agreed that he provided his notice to end the tenancy by text message on January 5, 2014. The Tenant testified that another occupant in the building moved into the rental unit in mid-January, 2014. He stated that the other occupant's suite (the "lower suite") remained vacant until February, 2014.

The Landlord stated that the other occupant moved into the rental unit a little early, but that she paid her rent for the lower suite for the month of February, 2014. He stated that he had lost February's revenue for the rental unit.

The Tenant testified that he gave the Landlord his forwarding address on March 7, 2014. The Landlord acknowledged receiving the Tenant's forwarding address on March 7, 2014.

The Landlord testified that the Tenant agreed that the Landlord would keep the security deposit and that in exchange the Landlord agreed not to claim for loss of revenue. The Tenant denied that the parties had this agreement.

Analysis

Is the Landlord entitled to a monetary award for loss of revenue for February, 2014?

Section 52 of the Act provides that a party must give notice to end a tenancy in writing and that the Notice must be signed by the party giving the Notice. A text message does not comply with the requirements of Section 52 of the Act. In addition, Section 45 of the Act requires a tenant must give at least one month's notice and that the Notice must be given before the day in the month that rent is payable under the tenancy agreement. Therefore I find that the Tenant's Notice was not a valid notice to end the tenancy.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Based on the testimony of both parties, I find that the Tenant did not comply with the Act when he gave his Notice and that the Landlord suffered a loss as a result of the Tenant's non-compliance.

Therefore, I find that the Landlord is entitled to a monetary award in the amount of **\$575.00.**

Is the Tenant entitled to return of the security deposit?

A security deposit is held in a form of trust by the Landlord for the Tenant, to be applied in accordance with the provisions of the Act.

Section 38(1) of the Act provides that (unless a landlord has the tenant's consent to retain a portion of the security deposit) at the end of the tenancy and after receipt of a tenant's forwarding address in writing, **a landlord has 15 days** to either:

1. repay the security deposit in full, together with any accrued interest; or
2. **make an application for dispute resolution claiming against the security deposit.**

Section 38(6) of the Act provides that if a landlord does not comply with Section 38(1) of the Act, the landlord **must** pay the tenant double the amount of the security deposit.

In this case, the Landlord did not return the security deposit within 15 days of receipt of the Tenant's application. The Landlord did not claim against the security deposit on his Application for Dispute Resolution. Therefore, I find that the Tenant is entitled to a monetary award in the equivalent of the double the amount of the security deposit, **\$576.00.**

Set off of Claims

I make no order with respect to recovery of either party's filing fee from the other. I hereby set off the Landlord's monetary award against the Tenant's monetary award. The balance is **\$1.00**. I decline to issue a Monetary Order in the amount of \$1.00.

Conclusion

Both parties have been successful in their claims. After setting off each other's monetary awards, the balance is **\$1.00** and I decline to issue a monetary order in that amount.

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: July 28, 2014

Residential Tenancy Branch

