



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, 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 unpaid rent for December 2013, for loss of income for January and February 2014 and for the recovery of the filing fee. The tenant applied for a monetary order for the return of overpayment of rent, the cost of utilities for December 2013, for the return of double the security deposit and for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary for loss of income and the filing fee? Is the tenant entitled to the return of double the security deposit and the filing fee? Did the tenant overpay rent?

Background and Evidence

The tenancy started on November 15, 2012 and ended on January 02, 2014. Prior to moving in, the tenant paid a security deposit of \$800.00.

The initial tenancy agreement was for a rent of \$1,600.00 plus 100% of the utility bill. Three months into the tenancy the parties amended the tenancy agreement and the amount payable by the tenant was changed to \$1,800.00 plus 60% of the utilities. The landlord would cover the balance of 40% of utilities. Through the tenancy, the tenant would pay the utility bill and make a deduction off rent in the amount of 40 % of the utility bill. The tenant made rent payments in this manner until December 2013.

Both copies of the tenancy agreements were filed into evidence. The tenant pointed out that the rent change to \$1,800.00 was not initialed by him and therefore the rent should have remained at \$1,600.00. Despite his testimony, the tenant also agreed that through the tenancy he paid \$1,800.00 for rent with a deduction of 40% of the utility bill. The tenant's evidence contains a hand written statement of accounts which confirms that the tenant paid \$1,800.00 plus 60% of the utilities. The tenant believes he overpaid rent in the amount of \$200.00 per month and is claiming \$2,400.00 to be returned to him.

The tenant failed to pay rent for December 2013 and the landlord served him with a notice to end tenancy. The tenant then made application for the return of what he believed to be rent that he had overpaid. The landlord stated that he was surprised at the tenant's claim because all through the tenancy, he had paid rent of \$1,800.00 plus 60% of utilities and the balance of 40% was covered by the landlord.

On December 16, 2013, the tenant gave the landlord notice to end the tenancy with an effective date of January 02, 2014. The tenant moved out on January 02, 2014 and met the landlord on January 06, 2014 to hand over the keys to the rental unit. The tenant asked the landlord to sign a mutual end to tenancy form. The landlord stated that since the tenant had moved out, he signed the form without realizing that the tenant's obligations would end that day. The landlord maintained that despite his efforts to find a new tenant, he suffered a loss of income of rent for January and February 2014, and intended to make a claim against the tenant.

The tenant stated that the landlord did not make application within 15 days of the end of tenancy and receiving the tenant's forwarding address and therefore the tenant is claiming the return of double the security deposit. The tenant stated that he paid the landlord's share of utilities for December and is claiming \$387.08. The landlord agreed that he owed this amount.

Analysis

Landlord's application

The tenant agreed that he did not pay rent for December. Therefore I find that the tenant owes the landlord \$1,800.00 in unpaid rent.

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic 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.

Based on the testimony of both parties, I find that the tenant did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the month of January 2014. By giving the landlord notice to end the tenancy on December 16, 2013, the earliest the tenant could have legally ended the tenancy was January 31, 2014.

Even though the landlord signed a mutual end to tenancy, I find on a balance of probabilities that the landlord intended to make a claim for the loss of income he suffered. I accept his testimony that he signed the form at the time the tenant handed him the key with the understanding that since the tenancy was over he was required to sign the form. The landlord stated that he was unable to find a tenant for February 2014, and is also claiming a loss of income for that month.

Based on s.45 of the *Residential Tenancy Act*, I find that the landlord has established a claim for loss of income for January 2014 and I award him \$1,800.00. His claim for the loss suffered in February 2014 is dismissed.

Since the landlord has proven a portion of his claim, I award him the recovery of the filing fee of \$100.00.

Tenant's Application

Based on the evidence and sworn testimony of both parties, I find that the tenant paid \$1,800.00 for rent per month plus 60% of utilities. The rent payments by the tenant during the entire tenancy and his own statement of accounts confirm that this was the agreement between the two parties. Therefore I find that the tenant did not overpay rent and accordingly his application for \$2,400.00 in overpaid rent is dismissed.

The landlord agreed that he owed the tenant \$387.08 in utilities and therefore I award the tenant this amount.

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.

Based on the sworn testimony of both parties, I find that the landlord was notified of the tenant's forwarding address on January 06, 2014. I further find that the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address.

Therefore, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

The landlord currently holds a security deposit of \$800.00 and is obligated under section 38 to return double this amount along with the accrued interest of \$0.00. I grant the tenant \$1,600.00 for the return of double the security deposit.

The tenant has proven most of his claim and therefore I award the tenant the recovery of the filing fee of \$50.00.

Overall the landlord has established a claim for \$1,800.00 for rent for December 2013, \$1,800.00 for loss of income for January 2014 plus \$100.00 for the recovery of the filing fee for a total claim of \$3,700.00.

The tenant has established a claim for \$387.08 for utilities, \$1,600.00 for the return of the security deposit and \$50.00 for the filing fee for a total of \$2,037.08.

I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$1,662.92 which consists of difference in the established entitlements of both parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act*, for \$1,662.92. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord will retain the security deposit. I grant the landlord a monetary order in the amount of \$1,662.92.

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: September 12, 2014

Residential Tenancy Branch

