



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Capreit
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Landlord: OPR, MNR, FF
Tenant: MNDC, MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution with the landlord seeking an order of possession and a monetary order and the tenant seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

The landlord had named two tenants on her Application for Dispute Resolution. She testified that she served both Applications to both tenants at the address provided by the female tenant to the landlord. The female tenant testified that the male tenant did not move with her and she has no idea how to locate the male tenant.

As such, I find the landlord has failed to serve the male tenant with her Application for Dispute Resolution or notice of this hearing. Residential Tenancy Policy Guideline #13 stipulates that co-tenants are jointly and severally responsible for any debts or damages relating to the tenancy. As the tenancy agreement lists the two named respondents to the landlord's Application I find that the tenants are co-tenants.

As the landlord has served the female tenant successfully and not the male tenant, I find that this Application can be heard against only the tenant who has been successfully served and I amend the landlord's Application to exclude the male tenant.

At the outset of the hearing the landlord confirmed the tenant is no longer living in the rental unit and as such no longer requires an order of possession. I amend the landlord's Application to exclude the matter of possession.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for parking fees; for a bank administration fee; lost key replacement; and to

recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 67, and 72 of the *Residential Tenancy Act (Act)*.

The issues to be decided are whether the tenant is to a monetary order for double the amount of the security and pet damage deposits 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 landlord submitted into evidence a copy of a tenancy agreement signed by the parties on January 29, 2014 for a 1 year fixed term tenancy beginning on February 1, 2014 for a monthly rent of \$975.00 due on the 1st of each month with a security deposit of \$487.50 and a pet damage deposit of \$487.50 paid. The agreement included a clause requiring the payment of fee of up to \$25.00 for any payments returned as insufficient funds. There is no parking fee included in the tenancy agreement.

The tenant submits that in April 2014 she contacted the landlord and informed her and told her the male tenant would be taking over the rental unit. She states the landlord tried to collect rent for May rent by the pre-authorized payment plan and that when she contacted the landlord she advised the tenant that the male tenant had left. She states the landlord asked to return and clean the rental unit in exchange for return of the deposits.

The landlord submits it was in May 2014 that the tenants approached her about the female tenant moving out. She submits that she provided the tenants with the form that required signatures of both tenants to release the female tenant from the agreement but that the form was never returned to her.

The landlord submits that after attempting to obtain payment for through pre-authorized payments and no response from the tenants she posted a notice of inspection on the rental unit door, as she expected the unit had been abandoned.

The landlord submits the female tenant attended the unit that date and agreed to clean and return for a move out condition inspection. The inspection was completed on June 19, 2014 and the female tenant's forwarding address was provided.

The landlord seeks payment of rent for the month of June 2014 in the amount of \$975.00 and bank administration charges for the returned payment in the amount of \$25.00.

The Condition Inspection Report indicates the tenants were issued 2 building keys; 2 suite keys; and 1 mail key at the start of the tenancy. The tenant returned 1 building key and 1 suite key only. The landlord seeks compensation in the amount \$25.00 on her Application but indicates the amount sought is \$95.00 as outlined in the Condition Inspection Report.

Analysis

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

While I accept the landlord was aware of the female tenant's intention of seeking to leave the rental unit, I find the tenants failed to follow through on the landlord's request to provide a documented and signed request to have the female tenant's name removed from the tenancy agreement.

As such, I find the female tenant was never removed as a party to the tenancy and was therefore required to provide the landlord with notice of her intent to end the tenancy in accordance with Section 45(2). As no such notice was provided I find the tenant is responsible for the payment of rent until the end of the fixed term subject only to the landlord's obligation to mitigate losses.

As the landlord has submitted the rental unit was re-rented for July 4, 2014 and has not claimed any lost rental income, I find the tenant is not responsible for any rent beyond the end of June 2014. However, as per the landlord's claim I find the tenant is responsible for rent for the month of June 2014.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

Based on the testimony of both parties, I also find the landlord is entitled to both the bank administration fee of \$25.00 and the costs to replace keys as all keys were not returned as required under Section 37.

While the landlord claimed only \$25.00 in her Application, I find that since the Condition Inspection Report that was signed by the tenant outlining the costs for replacement keys were \$90.00 the tenant was aware of the cost to the landlord for this loss and the landlord is entitled to recover this amount.

As to the landlord's claim for parking charges, as there is no clause in the tenancy agreement requiring the payment of any amount for parking, I dismiss the landlord's claim for \$20.00 for parking.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit.

Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

From the landlord's own written submission she received the tenant's forwarding address on June 19, 2014, the day possession was returned to the landlord. As a result, I find the landlord had until July 4, 2014 to file an Application for Dispute Resolution to claim against the deposits or return them to the tenant. As of the date of the hearing the landlord had not applied to retain either deposit collected at the start of the tenancy.

Therefore, I find the landlord has failed to comply with Section 38(1) of the *Act* and as such, the tenant is entitled to return of double the amount of both deposits, pursuant to Section 38(6).

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,140.00** comprised of \$975.00 rent owed; \$25.00 bank administration charges; \$90.00 key replacement; and the \$50.00 fee paid by the landlord for this application.

I find the tenant is entitled to monetary compensation pursuant to Section 67 in the amount of **\$2,000.00** comprised of \$975.00 double the security deposit; \$975.00 double the pet damage deposit; and the \$50.00 fee paid by the tenant for this application.

As a result, I grant a monetary order to the tenant for the difference between the two awards in the amount of **\$860.00**.

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: September 08, 2014

Residential Tenancy Branch

