



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF, MNDC

Introduction

There are applications filed by both parties. The landlord seeks a monetary claim for unpaid rent or utilities, to keep all or part of the security deposit and recovery of the filing fee. The tenant has two applications filed for which Residential Tenancy Branch File No. a Review Hearing was granted for the tenant's application for money owed or compensation for damage or loss and the return of double the security deposit and on Residential Tenancy Branch File No. a duplicate application for the same dispute as confirmed by the tenant. As such, Residential Tenancy Branch File No. is dismissed and the hearing shall proceed on the two remaining files.

Both parties attended the hearing by conference call and gave evidence. As both parties have attended and have confirmed receipt of the notice of hearing package submitted by the other party, I am satisfied that both parties have been properly served.

During the hearing, the landlord amended his monetary claim lowering it from \$950.00 to \$150.00. The tenant made no comment for this amendment. As such the landlord's claim is amended to \$150.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?
Is the tenant entitled to a monetary order?

Background and Evidence

This tenancy began on August 1, 2013 on a fixed term tenancy for 6 months ending on January 31, 2014 and then ends as shown by the submitted copy of the signed tenancy agreement dated August 10, 2013. The monthly rent is \$475.00 payable on the 1st of each month and security deposit of \$150.00 was paid on August 10, 2013. Both parties agreed that the tenancy ended at the end of November of 2013. Both parties confirmed that this tenancy was a shared accommodation in which the tenant rented a room and shared the common spaces with other occupants.

The tenant states that he vacated the rental unit on November 25, 2013 providing notice to the landlord by email and telephone on the same date. The tenant states that he ended the tenancy because of ongoing issues that the tenant was not maintaining the rental unit as agreed. The landlord confirms receiving the email, but argues that the email was not in written form as per the Act, but did not advise the tenant of such. The landlord also argues that as part of the signed tenancy agreement and addendum that each tenant is responsible for maintaining the rental unit common/public areas. No condition inspection reports for the move-in or the move-out were completed by either party. The tenant states that during this time that he only used the bathroom 50% of the time, lived in the rental room 50% of the time and used the kitchen only 10% of the time due to the dirty conditions of the rental unit. The tenant relies on the submitted photos of the rental unit which show the condition. The photos show a dirty kitchen and bathroom, mold in the bathroom and mouse droppings in the kitchen. The landlord stated that daily cleaning is not the responsibility of the landlord. The tenant stated that the tenant moved into a dirty environment for which the landlord was responsible in providing a minimum standard of care.

The landlord seeks a monetary claim of \$150.00 which consists of unpaid rent. The tenant disputes this. The landlord states that he discovered that the tenant had vacated the rental unit without proper notice in writing on December 1, 2013. The landlord seeks a claim for loss of rental income for \$150.00.

The tenant seeks a monetary claim of \$1,725.00 consisting of \$1,425.00 for the return of rent for 3 months (September, October and December of 2013) for the loss of use and \$150.00 for the return of the security deposit. The tenant also seeks an additional \$150.00 as the landlord has failed to comply by returning the \$150.00 security deposit in accordance with the Act.

Analysis

Section 38 of the Residential Tenancy Act states,

38 (1) Except as provided in subsection (3) or (4) (a), within 15 days after the later of

(a) the date the tenancy ends, and

(b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

(c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;

(d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24 (1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

(4) A landlord may retain an amount from a security deposit or a pet damage deposit if,

(a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or

(b) after the end of the tenancy, the director orders that the landlord may retain the amount.

(5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].

(6) If a landlord does not comply with subsection (1), the landlord

(a) may not make a claim against the security deposit or any pet damage deposit, and

(b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

(7) If a landlord is entitled to retain an amount under subsection (3) or (4), a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise.

(8) For the purposes of subsection (1) (c), the landlord must use a service method described in section 88 (c), (d) or (f) [*service of documents*] or give the deposit personally to the tenant.

As both parties have agreed that the tenancy ended sometime near the end of November 2013 and that the landlord received the tenant's notice to vacate and the tenant's forwarding address in writing by email on November 25, 2013, I find that the tenant failed to provide proper notice to end a fixed term early. I also find that the landlord did receive notification that the tenancy was ending from the tenant on November 25, 2013. The landlord has applied for dispute over the return of the security deposit on May 7, 2014 which is approximately 6 months after the end of the tenancy. The tenant originally applied for the return of the security deposit on January 13, 2014 and if not on November 25, 2013 then on January 13, 2014 is deemed to have been advised of the tenant's forwarding address in writing. I find that it is clear that in either event the landlord was advised of the tenant's forwarding address in writing and failed to properly apply for dispute resolution to retain the security deposit or obtain permission from the tenant or the branch. As such, the tenant has established a claim for the return of double the security deposit as per section 38 (6) of the Act. The tenant has established a monetary claim of \$300.00.

As for the tenant's monetary claim for the return of \$1,425.00 in rent for 3 months, I find that the tenant has failed. The tenant stated that he advised the landlord that the state of the rental unit was not acceptable at the beginning of the tenancy. The landlord has disputed this. The tenant was able to provide evidence in an email dated November 25, 2013 when he vacated the rental unit and that the landlord failed to act as well as photographs depicting the condition of the rental unit. The landlord also submitted photographs, but I find that these can't be photos of an occupied rental as the photos clearly show no occupants/furniture. However, I find that I prefer the evidence of the tenant over that of the landlord and find that although the tenant has failed establish a claim for the amount claimed that the tenant has provided sufficient evidence to satisfy me that he suffered a loss of use, but not to the extent of 100% loss of the shared rental. As such, I grant a nominal award of \$150.00 for each month equal to the loss of use of 1/3 of the rental space for each month totalling, \$450.00.

I find that the landlord has established that the tenant failed to provide proper notice and ended the tenancy prematurely at the end of November 2013 as opposed to the fixed term ending on January 31, 2014. The tenant admitted in his direct testimony that he chose to not provide notice to end the tenancy as he was experiencing difficulties with the landlord as opposed to filing an application for dispute resolution. As such, the landlord has established a claim for loss of monthly rent which is limited to the amended claim filed as \$150.00 by the landlord. The landlord is also entitled to recovery of the \$50.00 filing fee. The landlord has established a total monetary claim of \$200.00.

In offsetting these claims, I find that the tenant is entitled to a monetary order for ~~\$500.00~~ **\$550.00**. (Tenant's monetary claim \$750.00- Landlord's monetary claim \$200.00). This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The tenant is granted a monetary order for ~~\$500.00~~ **\$550.00**.

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 09, 2014

Residential Tenancy Branch

