



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlords – MNSD, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The tenant applied for a Monetary Order to recover the security, the storage shed and pet deposits and to recover the filing fee from the landlords for the cost of this application. The landlords applied for an Order permitting the landlords to keep all or part of the tenant's security, storage shed and pet deposits; and to recover the filing fee from the tenant for the cost of this application.

The tenant and the male landlord attended the conference call hearing and gave sworn testimony. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

At the hearing I explained to the parties about the limitation period for making claims. In regard to this matter I refer the parties to s. 60 of the *Residential Tenancy Act* (The Act) which states:

Latest time application for dispute resolution can be made

60 (1) *If this Act does not state a time by which an application for dispute resolution must be made, it must be made within 2 years of the date that the tenancy to which the matter relates ends or is assigned.*

(2) Despite the [Limitation Act](#), if an application for dispute resolution is not made within the 2 year period, a claim arising under this Act or the tenancy agreement in relation to the tenancy ceases to exist for all purposes except as provided in subsection (3).

(3) If an application for dispute resolution is made by a landlord or tenant within the applicable limitation period under this Act, the other party to the dispute may make an application for dispute resolution in respect of a different dispute between the same parties after the applicable limitation period but before the dispute resolution proceeding in respect of the first application is concluded.

Consequently, pursuant to s. 60(3) of the Act I find as the tenant did file her application within the 2 year time frame and the landlords filed their application outside the two year time frame but before the tenant's application was concluded I am able to decide on both parties applications at this hearing.

Issue(s) to be Decided

- Is the tenant entitled to a Monetary Order to recover the security, storage shed and pet deposits?
- Are the landlords entitled to keep the security, storage shed and pet deposits?

Background and Evidence

The parties agreed that this month to month tenancy started on October 01, 2011 and ended on July 31, 2012. Rent for this unit was \$575.00 per month due on the first day of each month. The tenant paid a security deposit of \$287.50; the storage shed deposit of \$100.00 and a pet deposit of \$100.00 on September 13, 2011.

The tenant testified that the landlords were sent the tenant's forwarding address in writing by mail on August 30, 2012. The tenant testified that she did not give the landlords written permission to keep all or part of the security, storage shed or pet deposits and the landlords have not returned any of these deposits to the tenant. I discussed with the parties about s. 38 of the Act regarding security deposits; the tenant waived her right to have the security, storage

shed and pet deposits doubled and testified that she just want to recover the amounts paid of \$487.50.

The landlord testified that the tenant ended the tenancy without written notice on July 31, 2012. The landlords were unable to re-rent the unit until September 01, 2014 and have provided a copy of the new tenancy agreement for that date in documentary evidence. The landlords seek an order to keep the security and pet deposits in partial satisfaction of the loss of revenue for August, 2012. The landlord testified that they were unaware that they only had 15 days in which to file an application to keep the security and pet deposits.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 45(1) of the *Act* which states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find therefore that the tenant did not provide proper written notice to the landlords to end the tenancy on July 31, 2012 pursuant to s. 45 of the *Act* and as indicated under clause 13 of the tenancy agreement. Consequently, I find the landlords are entitled to keep the security deposit of \$287.50; the storage shed deposit of \$100.00; and the pet deposit of \$100.00 in partial satisfaction of the landlords' loss of revenue for August, 2012.

The landlords have not made any further claim for the reminder of rent for August, 2012.

The tenant's application to recover the security and pet deposits is dismissed.

The tenant must bear the cost of filing her own application.

The landlords are entitled to recover the \$50.00 filing fee from the tenant pursuant to s. 72(1) of the Act.

Conclusion

The tenant's application is dismissed in its entirety without leave to reapply.

I HEREBY FIND in favor of the landlords' monetary claim. I Order the landlords to keep the security, the storage shed, and pet deposits of \$487.50 pursuant to s. 38(4)(b) of the *Act*. A copy of the landlords' decision will be accompanied by a Monetary Order for the filing fee of **\$50.00**. The Order must be served on the respondent. If the respondent fails to pay the Order, the Order is enforceable through the Provincial Court 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: October 08, 2014

Residential Tenancy Branch

