



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses.

The landlord testified that he served the tenant with the Notice of Application for Dispute Resolution hearing ("Notice") on June 30, 2014 via registered mail. He provided a tracking number to confirm this registered mailing during the hearing. The tenant confirmed that she received the Notice from the landlord. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Notice on July 5, 2014, the fifth day after its registered mailing.

The landlord further testified that he served the tenant with the evidence for the Application for Dispute Resolution ("Evidence") by sending it by registered mail on September 9, 2014. He provided a tracking number to confirm this registered mailing during the hearing. The tenant confirmed that she received the Evidence from the landlord. In accordance with sections 89 and 90 of the *Act*, I find that the tenant was deemed served with the Evidence on September 14, 2014, the fifth day after its registered mailing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent arising out of this tenancy?
Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

In his Application for Dispute Resolution package ("Application"), the landlord provided a copy of the tenancy agreement, which was for a fixed term of six months, beginning on May 15, 2013 and ending on November 15, 2013, after which it transitioned to a month-to-month tenancy. Rent is payable monthly in the amount of \$1,450.00 on the first day of each month. A security deposit in the amount of \$725.00 was due on May 15, 2013. However, the landlord testified that the initial cheque that he received from the tenant for the security deposit was dishonoured, after which he received the full security deposit from the tenant, some months later. The tenancy agreement was signed by both the tenant and landlord on April 15, 2014.

The landlord is seeking a monetary order for unpaid rent in the amount of \$725.00 for the half month period from June 15 to June 30, 2014. The landlord is seeking to retain the tenant's entire security deposit of \$725.00 to cover this unpaid rent, which he continues to hold. The landlord is also seeking to recover the filing fee of \$50.00 for his application from the tenant.

The tenancy was ended by the tenant, who vacated the rental unit on June 15, 2014. The tenant provided notice via text message to the landlord on May 18, 2014, to vacate her rental unit effective on June 15, 2014. Thereafter, the landlord and tenant engaged in a lengthy conversation via text messages, regarding the notice period, unpaid rent and damage to the rental unit that needed to be repaired. The text messages were provided with the landlord's Application. The landlord confirmed that he was not seeking any amount for damage to the rental unit, in his Application. The landlord further confirmed upon questioning, that he had not agreed to the tenant vacating the rental unit on June 15, 2014, which was outside the one month notice period, and that he had advised the tenant that her vacancy date should have been effective June 30, 2014.

The tenant initially provided the landlord with a cheque in the amount of \$1,450.00 for June 2014 rent. The landlord and tenant both testified that this cheque was dishonoured because the landlord tried to cash the cheque early, before June 1, 2014. The landlord was then provided with another cheque from the tenant in the amount of \$725.00 for rent from June 1 to June 15, 2014, as per the landlord's testimony and text message evidence in his Application. The tenant did not dispute that she only provided the landlord with \$725.00 for rent in June 2014 and in fact, admits this in various text messages provided in the Application.

The landlord confirmed that he still holds the tenant's security deposit in the amount of \$725.00 and that it has not been used to cover any damage costs. The landlord provided a receipt in his Application that he paid \$99.75 for carpet cleaning on June 24, 2014. Although the tenant had authorized the landlord to use her security deposit to cover the carpet steam cleaning costs for the rental unit, via text message provided in the Application, the landlord testified that he had not deducted any portion of the security deposit for this damage or any other costs. The tenant provided a forwarding address to the landlord on June 15, 2014, as per the landlord's testimony.

Analysis

While I have turned my mind to all the documentary evidence, including the tenancy agreement, photographs, text messages, e-mails, other miscellaneous documents, and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 26(1) of the *Act* requires a tenant to pay rent when it is due under the tenancy agreement, whether or not the landlord complies with the *Act*, the regulations or the tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of rent.

Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving notice to the landlord effective on a date that is not earlier than one month after the date the landlord receives the notice. The section also states that notice is effective on the day before rent is payable under the tenancy agreement. Section 45(4) of the *Act* also requires the notice to comply with the form and content of Section 52, which requires the notice to be in writing, signed and dated by the tenant, gives the address of the rental unit and states the effective date of the notice.

In this situation, the tenant gave notice to the landlord on May 18, 2014 in order to move out on June 15, 2014. The tenant's move out date must be effective the day before the first day of the month, which is when rent was due under this tenancy agreement. By providing her notice on May 18, 2014, the earliest effective date that the tenant could vacate the unit would be June 30, 2014. Moreover, the tenant did not provide proper written notice, as she sent it via text message to the landlord, a copy of which the landlord enclosed in his Application. A text message does not comply with this written notice requirement. Additionally, the tenant did not give the address of the rental unit in her notice.

I find that the tenant was required to pay the full rent for June 2014, as her effective vacancy date in accordance with Section 45 of the *Act* would be June 30, 2014. She was not entitled to deduct any rent due to the landlord for June 2014. The tenant was required to pay \$1,450.00 in rent and only paid \$725.00, leaving a remaining balance due to the landlord in the amount of \$725.00. I find that the landlord is entitled to \$725.00 for unpaid rent from the tenant to cover the rent owing from June 15 to 30, 2014.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security deposit or file for dispute resolution for authorization to retain a security deposit within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to section 38(6) of the *Act* equivalent to double the value of the security deposit. However, this provision does not apply if the landlord has obtained the tenant's written authorization to retain all or a portion of the security deposit to offset damages or losses arising out of the tenancy.

The landlord was notified of the tenant's forwarding address on June 15, 2014. The landlord's Application is dated June 19, 2014 and was received by the Residential Tenancy Branch ("RTB") on June 23, 2014. The landlord testified that June 23, 2014 was likely the date he submitted his Application to the RTB. Therefore, I find that the landlord applied for dispute resolution within the required 15 days, in accordance with Section 38.

The landlord testified that he continues to hold the tenant's security deposit of \$725.00. No interest is payable on the landlord's retention of the security deposit. The landlord's Application seeks to retain the entire security deposit. Using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the tenant's full security deposit of \$725.00 plus applicable interest in partial satisfaction of the monetary award. No interest is payable over this period.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$50.00 against the tenant. The landlord is provided with a monetary order in the amount of \$50.00 in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: November 3, 2014

Residential Tenancy Branch

