



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

AA matter regarding SUNSET PARK APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, pursuant to section 67;
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

The landlord's agent, DK ("landlord") and the tenant attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. The landlord's agent testified that she is the resident manager of the rental building and has authority to appear as agent on behalf of the landlord at this hearing. The tenant called a witness, MM ("MM"), who was a former occupant of the rental unit with the tenant, who provided testimony at this hearing.

The tenant testified that he personally served the landlord with his application for dispute resolution hearing package ("Application") prior to August 1, 2014, although he could not recall the exact date. The landlord confirmed that she received the tenant's Application around July 25, 2014. In accordance with sections 89 and 90 of the *Act*, I find that the landlord was duly served with the tenant's Application.

Issues to be Decided

Is the tenant entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

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

Background and Evidence

The landlord testified that this tenancy began on April 1, 2013 for a fixed term ending on June 30, 2013, after which it transitioned to a month to month tenancy. Monthly rent in the amount of

\$695.00 was payable on the first day of each month. A security deposit of \$347.50 was paid by the tenant for this tenancy. The tenant vacated the rental unit on July 10, 2014. The landlord returned \$277.50 to the tenant from his security deposit.

The tenant testified that he provided verbal notice to the landlord on June 27, 2014 and written notice to the landlord on July 3, 2014, that he would be vacating the rental unit on July 15, 2014. The landlord confirmed that she received the tenant's written notice from MM, on July 3, 2014.

Both parties agreed that the tenant paid \$695.00 in rent for the entire month of July 2014. The tenant seeks a return of \$695.00 paid for July rent, because he moved out early on July 10, 2014 and left the rental unit in a clean condition.

MM testified that she and the tenant only had 15 days to move into their new rental unit and gave notice to the landlord of their intention to vacate on July 3, 2014. She stated that when she gave notice to the landlord, she was advised by the landlord that half a month's rent for July 2014 would be returned to the tenant.

The landlord testified that she advised MM that she would try to return half a month's rent to the tenant for July 2014, but never promised this amount. The landlord stated that she asked the landlord owner if she could return this rent to the tenant. The landlord was advised by the landlord owner not to return this amount to the tenant because rent is from the first day to the last day of the month and the rental unit could not be rented out for the remainder of July 2014. The landlord stated that she showed the rental unit to three prospective tenants after the tenant vacated the rental unit on July 10, 2014, in an attempt to re-rent it for the remainder of July 2014. However, those prospective tenants had to give notice at their own rental units and were unable to move to the tenant's rental unit in mid-July, as per the landlord's evidence. The landlord stated that she was unable to return the tenant's half month's rent for July 2014.

Analysis

Section 45(1) of the *Act* requires a tenant to end a month-to-month tenancy by giving the landlord at least one month's notice to end the tenancy on the day before the day in the month when rent is due. Section 52 of the *Act* requires that a tenant provide this notice in writing. In this case, in order to avoid any responsibility for rent for July 2014, the tenant was required to provide his written notice to end this tenancy by May 31, 2014 and to vacate the rental unit by June 30, 2014. The tenant provided verbal notice on June 27, 2014 and written notice on July 3, 2014, to move out on July 15, 2014. The tenant vacated the rental unit on July 10, 2014. The tenant did not provide one month's written notice to vacate. For these reasons, I find that the tenant did not comply with the provisions of section 45(1) of the *Act*.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a

landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

The tenant seeks the return of his July 2014 rent of \$695.00 in full. The landlord stated that she would try to return the tenant's half month's rent for July 2014. The landlord attempted to minimize her loss and re-rent the tenant's rental unit for the remainder of July 2014, but was unable to do so. As the tenant did not comply with section 7(1) of the *Act* and the landlord minimized her loss as per section 7(2) of the *Act*, I find that the tenant is not entitled to return of his July 2014 rent in the amount of \$695.00.

Accordingly, I dismiss the tenant's Application for a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

As the tenant was unsuccessful in his Application, he is not entitled to recover the \$50.00 filing fee from the landlord. The tenant must bear the cost of his own fee.

Conclusion

The tenant's Application for a monetary award for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, is dismissed.

The tenant is not entitled to recover the filing fee from the landlord.

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: December 30, 2014

Residential Tenancy Branch

