



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied for:

1. A Monetary Order for compensation or loss - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for compensation – Section 67;
3. An Order to retain the security deposit – Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions under oath.

Preliminary Matter

At the onset of the hearing the Tenant stated that an evidence package containing several pages, with receipts for the costs claimed, was provided to the Landlord and faxed to the RTB. Although this package was not in front of me at the time of the Hearing I informed the Parties that I would take oral evidence on the contents of the package. Subsequently this evidence package was located and reviewed for this Decision.

Issue(s) to be Decided

Are the Parties entitled to their respective claimed amounts?

Background and Evidence

The tenancy started on September 1, 2013 on a fixed term to end August 30, 2014. Rent of \$1,200.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$600.00 as a security deposit. On or before June 30, 2014 the Tenant gave notice to end the tenancy for July 31, 2014. On July 2, 2014 the Tenant paid \$600.00 to the Landlord for this rent. On July 9, 2014 the Landlord served the Tenant with a 10 day notice for unpaid rent by posting the Notice on the door.

The Tenant states that she informed the Landlord of multiple reasons for ending the tenancy early and informed the Landlord with her notice to end tenancy that he could keep the security deposit of \$600.00 for the remainder of rent for July 2014. The Landlord states that the Tenant's letter does not specifically state that he could keep the deposit in lieu of rent and that he sent a letter to the Tenant in reply that he did not agree to keep the security deposit for rent.

The Tenant states that the Landlord gave her an unjust eviction notice as the rent was covered by her payment and the security deposit. The Tenant states that she spoke with the RTB about the Landlord's notice and thought she had disputed the Landlord's eviction notice when she made her application on July 21, 2014. The Tenant states that she moved out of the unit on July 18, 2014 to comply with the Landlord's eviction notice. The Landlord states that he found the unit empty on July 22, 2014. The Tenant states that she informed the Landlord by email that she moved out of the unit.

The Tenant states that as she had to leave the unit earlier than the end of July 2014 as planned and that as the Landlord had no reason to evict her sooner that she is entitled to compensation of \$236.00 for the costs of moving her belongings, \$65.00 for the cost

to store her belongings and to \$350.00 for the cost to stay with her son until September 1, 2014 when she moved into another unit. The Landlord claims unpaid rent for July 2014 of \$600.00. The Landlord states that the Tenant could have paid the rent and remained in the unit until the end of the tenancy.

The Parties agree that renovations were being made to the unit at the outset of the tenancy and into the first month and that the Tenant did not move into the unit until sometime in September 2014 because of those renovations. The Landlord states that he thinks the Tenant finished moving in sometime around September 6 or 7, 2013. The Tenant states that she finished moving into the unit sometime in the second week of September or on September 15, 2013. The Tenant states that she paid full rent for the month and claims \$600.00 as compensation for not being able to move into the unit on the 1st of September 2013.

Analysis

Section 38(4) of the Act provides that a landlord may retain an amount from a security deposit or a pet damage deposit if, 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. Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. I accept that the Tenant offered the Landlord the security deposit for rent owed and that the Landlord refused this offer. I am not convinced that the Act as set out above compels a landlord to accept an offer to retain the security deposit against rent owed, particularly at the time when the rent is due and not at the end of the tenancy, however even if the Landlord was not in compliance by refusing to accept the offer to retain the security deposit, Section 26 would operate to compel the Tenant to pay the rent upon such a refusal. As there is no dispute that the Tenant failed to pay all the rent for July 2014 I find that the Notice was valid and effective to end the tenancy sooner than the Tenant's notice to end tenancy.

When a tenancy ends no further rent is payable. Given that the Landlord ended the tenancy and based on the Tenant's believable evidence that she moved out July 18, 2014, I find that the tenancy ended July 18, 2014 and rent was no longer payable after this date. As such and considering that the Landlord was paid rent to July 15, 2014, I find that the Landlord has only substantiated an entitlement to 3 days of rent at a rate of \$40.00 per day (\$1,200.00/30) for a total of **\$120.00**. Deducting this amount from the security deposit of **\$600.00** plus zero interest leaves **\$480.00** to be returned to the Tenant.

Section 7 of the Act provides that where a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the landlord or tenant must compensate the other for damage or loss that results. Although the Tenant claims compensation for having to move out of the unit prior to July 31, 2014, as the Tenant was served with a valid notice to end tenancy for unpaid rent I find that the Landlord did not cause the Tenant to move out of the unit early. I therefore dismiss the Tenant's claims for costs to move, storage and living expenses to August 31, 2014.

Based on the undisputed evidence that the Tenant was not able to move into the unit at the onset of the tenancy due to the unit not being ready as required under the tenancy agreement and considering the evidence from both Parties on the exact date of move-in is somewhat weak although somewhere between 7 and 14 days, I find that the Tenant has substantiated a loss of 10 days use of the unit or **\$400.00**.

As each Party has had limited success, I decline to award recovery of their respective filing fees.

Conclusion

I Order the Landlord to retain **\$120.00** from the security deposit plus interest of \$600.00 in full satisfaction of the claim.

I grant the Tenant an order under Section 67 of the Act for **\$880.00**. If necessary, this order may be filed in the Small Claims Court and 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: January 20, 2015

Residential Tenancy Branch

