



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The landlord has filed an application for a monetary order for damage to the unit, site or property, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The tenant has also filed an application for a monetary order for money owed or compensation, the return of double the security deposit and recovery of the filing fee.

Both parties attended the hearing and gave testimony. The tenant confirmed receiving the landlord's notice of hearing package and the submitted documentary evidence. The landlord stated that she has not received a notice of hearing package or any documentary evidence from the tenant. The landlord stated that she was unaware of any application filed by the tenant. The tenant clarified that she was not aware that she had to serve the landlord with her notice of hearing package and did not do so. The tenant also confirmed that she has not filed any documentary evidence for the landlord's dispute or for her application. I find that the landlord has properly served the tenant with her notice of hearing package and the submitted documentary evidence. I also find that the tenant has failed to follow the rules of procedure to serve the tenant's notice of hearing and find that it would be highly prejudicial to speak to the tenant's application. As such, the tenant's application for dispute resolution is dismissed with leave to reapply.

Issue(s) to be Decided

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

Background and Evidence

This tenancy began on April 1, 2014 on a fixed term tenancy ending on April 1, 2015 as shown by the submitted copy of the signed tenancy agreement dated March 7, 2014. The monthly rent is \$2,700.00 payable on the 1st of each month and a security deposit of \$1,350.00 and a pet damage deposit of \$1,350.00 were paid on March 7, 2014.

The landlord clarified that she seeks a monetary claim of \$1,731.98 consisting of \$1,416.98 for the cost of finding a new tenant, \$265.00 for damage to the floor and the recovery of the \$50.00 filing fee. The landlord has submitted copies of the signed tenancy agreement, a completed condition inspection report for the move-in dated March 7, 2014 and a partially completed copy of the condition inspection report for the move-out on July 1, 2014. The landlord has also submitted copies of email communications with the tenant regarding the parties responsibilities concerning parking and the tenants vehicles. The landlord states that because the tenants gave notice to end the tenancy prematurely that she made efforts to mitigate any losses by immediately advertising the unit for rent on craigslist. The landlord states that prospective tenants were interviewed, but she was forced to hire a management company who was successful in re-renting the unit for July 1, 2014.

The landlord states that the tenant breached the fixed term tenancy by ending it prematurely and vacated the rental unit on June 30, 2014 prior to the end of the term on April 1, 2015. Both parties confirmed that the tenant prematurely ending the fixed term tenancy on June 30, 2014 after providing notice to the landlord by email on May 30, 2014 which was received by the landlord on June 1, 2014.

The landlord states that during the condition inspection report for the move-out on July 1, 2014 that it was discovered that there was damage to the flooring in the living room. This is noted in the move-out report. It is also shown in the report that the tenant accepted a claim of \$265.00 as compensation for the floor damage by signing the agreement. The tenant confirmed that damage to the floor was done and that an agreement with landlord for the floor was made.

The tenant states that the fixed term tenancy was ended because the landlord had breached the tenancy agreement. The tenant states that their watercraft was to be stored in the garage as per a verbal agreement with the landlord and that their two vehicles were to be allowed parking on the rental property grounds. The landlord disputes this stating that as per the signed agreement only 1 parking spot was agreed to for a vehicle. The tenant states that they had to move out as towing costs and strata fines were levied against them storing the watercraft and parking their 2 vehicles.

During the hearing, the landlord stated that on August 5, 2014 a cheque for \$887.02 was issued and sent to the tenants. The landlord clarified that she withheld the remaining portion of the security and pet damage deposits as compensation without the tenant's permission.

Analysis

I accept the evidence provided by both parties and find based upon the tenant's own direct testimony that the tenants prematurely ended the fixed term tenancy on June 30, 2014 by giving notice to vacate the rental unit on May 30, 2014 which was received by the landlord on June 1, 2014. I also find that the landlord made reasonable efforts to mitigate any possible losses by advertising the rental unit and ultimately hiring a management company to re-rent the unit for July 1, 2014. The landlord has established grounds for monetary compensation of \$1,416.98 for hiring a management company to find a new tenant. As well, the tenant has agreed in writing as per the signed condition inspection report dated July 1, 2014 and in her direct testimony to the \$265.00 monetary claim for floor damages. The landlord is also entitled to recovery of the \$50.00 filing fee.

The landlord has established a total monetary claim of \$1,731.98. Both parties have confirmed that the landlord returned \$887.02 of the undisputed portion of the combined security and pet damage deposits. The landlord is granted a monetary order for \$119.00. 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's application is dismissed with leave to reapply.

The landlord is granted a monetary order for \$119.00.

The landlord may retain the security and pet damage deposits.

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 21, 2015

Residential Tenancy Branch

