



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenants for an order compelling the landlord to return their security deposit and a cross-application by the landlord for a monetary order and an order authorizing her to retain the security deposit. Both parties participated in the conference call hearing.

Issue to be Decided

Are the tenants entitled to the return of their security deposit?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on or about July 27, 2014 at which time the tenants paid a \$600.00 security deposit and that it ended on September 29, 2014. They further agreed that the tenants paid \$1,200.00 per month in rent and that they provided their forwarding address to the landlord on September 7. They further agreed that the tenants ended the tenancy by giving the landlord a letter on September 7 in which they stated that they were ending the tenancy due to “irreconcilable differences and the breach of (landlord tenant act 10.1) Quiet Enjoyment” (*reproduced as written*).

The landlord testified that when she received the tenants’ notice that they were vacating the unit, she immediately advertised the unit and showed it several times, but was unable to find new tenants until November. She seeks to recover the rent she lost for the month of October.

Analysis

Section 38(1) of the *Residential Tenancy Act* provides that within 15 days after the end of the tenancy and the date a landlord receives the tenants’ forwarding address, she

must either return the security deposit in full or file an application for dispute resolution to retain the deposit. In this case, the landlord did neither but arbitrarily held the deposit without lawful reason to do so. Section 38(6) provides that when a landlord fails to comply with section 38(1), she must pay the tenants double the amount of the security deposit. Although the tenants did not apply for double their deposit, Residential Tenancy Policy Guideline #17 directs me to order the landlord to pay double the security deposit in this situation when the tenants have not specifically waived their right to receive double. I therefore find that the tenants are entitled to the return of double their security deposit and I award them \$1,200.00.

Turning to the landlord's claim, there is no dispute that the landlord was unable to rent the unit for the month of October. In order to succeed in her claim against the tenants for that lost income, the landlord must prove that they breached their obligations under the Act, that the breach caused her loss and that she acted reasonably to minimize her losses. Section 45 of the Act provides that tenants must give one month's notice in order to end their tenancy. The only exception to this requirement is in a situation in which the landlord has breached a material term of the tenancy agreement. If tenants believe this has occurred, they may not immediately end the tenancy but pursuant to section 45(3) must advise the landlord in writing of the breach, give the landlord a reasonable time to correct the breach and only then may they end the tenancy without having provided one month's notice. I find that the tenants did not comply with their obligations under section 45 either to provide one full month's notice to end their tenancy or to advise the landlord of a material breach and give her opportunity to correct the problem. I find that the tenants breached their obligations under the Act.

I accept the landlord's testimony that she immediately began advertising the rental unit and that she showed it to 4 prospective tenants during the tenancy, but was unable to find suitable tenants until November. At the hearing, the tenants did not dispute that she acted reasonably to re-rent the unit.

I find that the landlord would not have lost income for the month of October if the tenants had not breached their obligations under the Act and I find that the landlord acted reasonably to minimize her losses. I find that the landlord has met the test for compensation and I find the tenants must be held liable for lost rent for October. I award the landlord \$1,200.00.

The landlord has also claimed the return of the \$50.00 filing fee paid to bring her application. Given the circumstances and her failure to comply with her obligations under the Act, I find it appropriate that she bear the cost of that fee and I dismiss the claim for recovery of that fee.

Both parties have been awarded \$1,200.00. Setting off those claims as against each other leaves zero monies owing to either party.

Conclusion

Each party has been successful in their claim and after setting off the awards as against each other, no monies are owing.

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: February 10, 2015

Residential Tenancy Branch

