



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF, MNDC,

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenant has filed an application seeking the return of double the security deposit as well as a monetary order for money owed or compensation for damage or loss suffered under the Act, regulation or tenancy agreement.

Both parties confirmed that they had exchanged all documentary evidence. I am satisfied that the parties duly served each other of their claims in accordance with Section 89 of the Act. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, to present affirmed oral testimony and to make submissions during the hearing.

Issue(s) to be Decided

Is either party entitled to a monetary order as claimed?

Background and Evidence

The tenancy began on or about November 1, 2013 and ended on July 31, 2014. The tenancy was to be for a fixed term of one year. Rent in the amount of \$1600.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$800.00.

Condition inspection reports were conducted at move in and move out.

The landlord gave the following testimony:

The landlord stated that the tenant “broke the lease early” and that they were unable to rent the unit for August 2014. The landlord stated that despite their best efforts of advertising on the internet, their own webpage and posting signs they incurred a loss of \$1600.00 revenue for August 2014. In addition, the landlord stated that the tenants had unpaid utility bills in the amount of \$200.00. The landlord stated that the tenant sent an e-mail on August 21, 2014 advising of their forwarding address. The landlord filed for dispute resolution on September 3, 2014.

The tenant gave the following testimony:

The tenant stated that he sent a text message to the landlords’ agent on August 15, 2014 advising of his forwarding address. The tenant stated that landlord had promised to conduct some repairs on the unit prior to his moving in. The tenant stated that the repairs were not conducted and that after waiting for almost nine months he gave noticed and ended the tenancy. The tenant stated that he had overpaid his share of utilities in the amount of \$214.78 and seeks to be reimbursed along with double his security deposit.

Analysis

Both parties have sought a monetary award in regards to the utilities however neither party provided any documentation for this hearing. Based on the lack of documentary evidence before me for consideration, neither party has been successful in that portion of their claims and accordingly dismiss that portion of each party’s application.

The landlord is seeking loss of revenue in the amount of \$1600.00. The tenant stated that he had legitimate cause to end the tenancy. When a tenant is seeking to end a fixed term tenancy as per section 45(3) of the Act, they must provide sufficient evidence to support that claim. The tenant stated that the unit required repairs that were not done. The tenant submitted some photos of the issues however he has failed to satisfy me that they were so vital in nature that it affected the ability of the tenant to remain in the unit or that any health or safety issue would arise.

Also, the tenant did not provide sufficient evidence that he informed the landlord of his these issues and his displeasure with them. Based on the above, the insufficient evidence before me and on the balance of probabilities I find that the tenant ended the tenancy prematurely without cause. Also, I find that the landlord took all reasonable steps to mitigate his loss and is entitled to \$1600.00 for the loss of revenue for the month of August.

The tenant stated that he gave his forwarding address by text message on August 15, 2014 and that the landlord did not return the money or file for dispute resolution within 15 days as required by the Act and seeks the return of double the deposit. The landlord stated that he did not receive the text but did receive an e-mail on August 21, 2014 and filed within the fifteen days as required.

Section 39 states a tenant must give the landlord their forwarding address in writing within one year of moving out, a text message does not meet that criteria. In addition, the landlords' agent stated that he had not received the text message but an e-mail on August 21, 2014. I accept the evidence of the landlords' agent and that the landlord filed for dispute resolution within the legislated timeline. The tenant is not entitled to the return of double the security deposit.

The tenants' application is dismissed in its entirety.

As for the monetary order, I find that the landlord has established a claim for \$1600.00. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$800.00 security deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$850.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order of \$850.00.

The tenants' application is dismissed in its entirety.

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: March 24, 2015

Residential Tenancy Branch

