



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call this date concerning an application made by the tenant for a monetary order for return of all or part of the pet damage deposit or security deposit and to recover the filing fee from the landlord for the cost of the application.

An agent for the landlord and the tenant attended the hearing, each gave affirmed testimony, and the landlord called one witness who gave affirmed testimony. The parties were given the opportunity to question each other respecting the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the tenant established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The tenant testified that this fixed term tenancy began on February 1, 2014 and expired on February 1, 2015. The tenants moved out of the rental unit on January 31, 2015. Rent in the amount of \$1,650.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. A copy of the tenancy agreement has been provided which shows a tenancy commencing on February 1, 2014 and expiring on February 1, 2015 and states that at the end of the fixed term the tenancy may continue on a month-to-month basis or for another fixed length of time.

At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$825.00. The parties signed a document on January 31, 2015 which has

the tenant's forwarding address on it, and the document also states that no new damages exist and the unit was cleaned. The tenant also served the landlord with the Tenant's Application for Dispute Resolution which contains the tenant's forwarding address in writing, but the landlord has not returned any portion of the security deposit.

The tenant further testified that the landlord has not served the tenant with an application for dispute resolution. The landlord had given the tenant 2 months written notice to move out because the landlord sold the rental unit, and the tenant didn't pay the last month's rent.

The tenant seeks an order for double the amount of the security deposit and recovery of the filing fee.

The tenant's witness testified that she is the spouse of the tenant and was advised by the Residential Tenancy Branch that the 2 month notice to end the tenancy given by the landlord was not legal.

The landlord's agent testified that in November, 2014 the parties signed a paper saying that February 1, 2015 is the vacancy date, which is also the expiry date on the tenancy agreement. Because the landlord didn't serve the approved 2 Month Notice to End Tenancy for Landlord's Use of Property, and the tenant agreed in writing to move out, the tenants were not entitled to one free month of rent. The landlord did not return the security deposit because the tenant didn't pay rent for January, 2015.

The landlord has not filed an application for dispute resolution.

Analysis

Firstly, because the tenancy agreement specifies that at the end of the fixed term the tenancy may continue on a month-to-month basis or for another fixed period, the tenancy did not automatically end on February 1, 2015. If a landlord wants a tenancy to end at the end of the fixed term, the tenancy agreement must say that. On the form used by the parties for this tenancy, the box beside, "(ii) the tenancy ends and the tenant must move out of the residential unit," must be ticked and both parties must initial the boxes beside. In this case, the parties initialed the boxes but checked off that the tenancy may continue.

The landlord's agent testified that the parties signed an agreement to end the tenancy on February 1, 2015 but no one has provided a copy of that note.

The *Residential Tenancy Act* is clear that a landlord has 15 days from the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later, to return a security deposit in full to a tenant, or make an application for dispute resolution claiming against it within that 15 day period. If the landlord does neither, the landlord must be ordered to repay the tenant double.

In this case, the landlord has not repaid the tenant the security deposit nor has the landlord made an application for dispute resolution claiming against it. I find that the landlord received the tenant's forwarding address in writing on January 31, 2015 and the tenancy ended that day. The landlord had until February 15, 2015 to return the deposit or make an application claiming against it but failed to do so. Therefore, I find that the landlord must repay the tenant double the amount, or \$1,650.00.

Since the tenant has been successful with the application, the tenant is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the tenant as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,700.00.

This order is final and binding and may be enforced.

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: April 07, 2015

Residential Tenancy Branch

