



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MNR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant, and one brought by the landlord. Both files were heard together.

The tenant's application is a request for an order for return of double the \$475.00 security deposit and a request for recovery of the \$50.00 filing fee.

The landlord's application is a request for a monetary order for lost rental revenue in the amount of \$950.00, and a request for recovery of the \$50.00 filing fee.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing.

I have given the parties the opportunity to present all relevant evidence, and to give oral testimony, and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

The issue is whether or not either the landlord or the tenant has established monetary claim against the other, and if so in what amount.

Background and Evidence

The parties entered into a fixed term tenancy agreement which began on April 1, 2014 and had an expiry date of October 1, 2014.

The monthly rent was set at \$950.00, and a security deposit of \$475.00 was paid to the landlord.

The landlord testified that:

- Although the tenants were in a fixed term tenancy agreement, the tenants phoned her on June 29, 2014 and told me that they were vacating and were giving one-month notice.
- I informed the tenant that they were in a fixed term tenancy to October 1, 2014 and therefore were required to stay until the end of the fixed term, however the tenant stated they were going to move anyway, as they had found a cheaper rental unit.
- The tenant sent an e-mail stating that they would be vacating on August 1, 2014, however since the Residential Tenancy Act states that the tenants must vacate by 1 PM on the last day of the tenancy, I informed the tenants, by e-mail, that they must move out by 1 PM on July 1, 2014, since they were not paying any rent for the month of August 2014.
- After receiving the notice that the tenants were vacating, she immediately attempted to re-rent the unit by posting ads, however she was unable to rent the unit in the month of August 2014 and therefore lost the full rental revenue for that month.
- The unit subsequently rented for September 1, 2014.
- She is therefore requesting an order that the tenants be held liable for the loss rental revenue for the month of August 2014, which resulted from the breach of their tenancy agreement.

The tenants testified that:

- The reason they gave the landlord notice to move before the end of the fixed term was because the landlord failed to provide proper heat to the rental unit and ignored their noise complaints.
- The rental unit was always cold and since the thermostat was in the landlords suite, they could not change the temperature themselves.
- They asked the landlord to turn up the heat however she refused to do so and simply told them to buy some blankets.
- They have a child, and they believe it's unreasonable to have to live in a rental unit that does not have proper heat.
- Further on June 29, 2014 the landlord had a birthday party that was very loud due to talking and people walking above them and when they went to speak to the landlord about the noise the landlord simply told them it was her house and

she could do what she wanted. They ended up having to put up with noise until 2:30 AM

- Therefore because of the problems with the heat, and the landlords refusal to deal with their request about the noise they decided to vacate the rental unit.
- They never told the landlord that they had a cheaper rental unit to move to and in fact they are paying more at their new rental unit.
- Further after they gave the landlord an e-mail stating they would be moving, the landlord sent them an e-mail stating they had to be out by 1 PM on July 31, 2014, and therefore the landlord has accepted their early move from the rental unit.
- They therefore believe that the landlords claim for lost rental revenue for the month of August 2014 should be dismissed
- They did vacate the rental unit on July 31, 2014 and at that time they gave the landlord a letter with their forwarding address in writing and requested that their security deposit be returned.
- The landlord has failed to return their security deposit, and did not apply within the 15 day time limit, and therefore they are requesting an order for double their security deposit.

In response to the tenants testimony the landlord testified that:

- The tenants never made any complaint about the temperature, or ever complained about any noise from her unit prior to giving their Notice to End Tenancy.
- The first time she ever heard that the tenants found the rental unit too cold was when she received the tenants hearing information.
- Further the first time she ever heard of any complaints of noise was after she received the tenants hearing information.
- She denies ever having a load party above the tenants rental unit.
- The only reason that was given to her for why the tenants were leaving was that they had found a cheaper rental unit.
- She also denies ever receiving a forwarding address in writing, and the first time she saw this letter was when it was received with the tenants hearing information.
- The tenants had verbally requested the return of their security deposit on July 31, but nothing was given in writing.

Analysis

It is my finding that the tenants did breach a fixed term tenancy agreement and that the landlord lost the full rental revenue for the month of August 2014 as a result of that breach.

The tenants claim that they vacated the rental unit due to the landlord failing to provide proper heat, and failing to consider their request to stop having a noisy party, however it is my finding that they have not met the burden of proving either of these issues were ever brought to the landlord's attention.

The burden of proving a claim lies with the applicant and when it is just the applicants word against that of the respondent that burden of proof is not met. In this case, since the tenants have provided no corroborating evidence, it is just their word against that of the landlords, and therefore it's my finding that the tenants have not met the burden of proving that they had reasonable grounds to end the tenancy before the end of the fixed term.

Further, although the tenants of argued that the landlords e-mail indicated that she had accepted the end of the tenancy for July 31, 2014, it's my finding that that e-mail does no such thing, it simply indicates that if the tenants choose to vacate and not pay August 2014 rent, the Residential Tenancy Act requires that they vacate by 1:00 PM on the last day of the tenancy which in this case would be to July 31, 2014.

Therefore, since the landlord was unable to re-rent the unit in the month of August 2014 it is my finding that the tenants are liable for that lost rental revenue and I therefore allow the landlords full claim for \$950.00 and recovery of her \$50.00 filing fee.

With regards to the tenants claim for return of the security deposit double, it is my finding that, again, the tenants have failed to meet the burden of proving that they ever serve the landlord with a forwarding address in writing, as it is just their word against the landlords, and the landlord denies ever receiving a forwarding address.

I therefore deny the tenants request for an order for return of double their security deposit and recovery of their filing fee.

Conclusion

I have allowed the landlords full claim of \$1000.00, and I therefore Order that the landlord may retain the full security deposit of \$475.00, and I have issued a monetary order in the amount of \$525.00.

The tenants claim for return of double the security deposit and recovery of the filing fee is dismissed in full without leave to reapply.

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 14, 2015

Residential Tenancy Branch

