



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF
 MNSD, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by both the Tenants and the Landlord.

The Landlord applied for a Monetary Order for unpaid rent, to keep the Tenants’ security deposit and to recover the filing fee from the Tenants. The Tenants applied for the return of double their security deposit and to recover the filing fee from the Landlord.

The Landlord named on the Landlord’s Application and both Tenants appeared for the hearing. However, only the female Tenant and the Landlord provided affirmed testimony during the hearing. Both parties confirmed receipt of each other’s Application and written evidence served prior to the hearing. The hearing process was explained and the participants had no questions of the process.

Issues to be Decided

- Is the Landlord entitled to monetary compensation for loss of rent as a result of the Tenants ending the tenancy early?
- Are the Tenants entitled to the return of double the amount of their security deposit?

Background and Evidence

Both parties agreed that this tenancy started on February 1, 2013 for a fixed term of one year after which the tenancy continued on a month to month basis. The Tenants paid the Landlord a security deposit of \$725.00 on January 15, 2013, which the Landlord still retains. Rent under the tenancy agreement was payable by the Tenants in the amount of \$1,750.00 on the first day of each month.

The Tenant testified that the tenancy ended when they vacated the rental unit on August 31, 2014. When the Tenant was asked about how the tenancy ended, the Tenant testified that she had given verbal and written notice to the Landlord by mail on July 25, 2015.

The Landlord denied that the Tenants had provided any written notice to end the tenancy during the tenancy. The Landlord testified that the Tenants had given her verbal notice by phone on August 2, 2015 to vacate by the end of August 2014. The Landlord submitted that this was contrary to the *Residential Tenancy Act* (the "Act").

When the Tenant was asked if she had a copy of her notice to end the tenancy, she explained that she did give one to the Landlord but did not retain a copy of it. The Tenant continued to submit that she had also emailed the Landlord with the notice to end tenancy. However, the Tenant was again unable to provide evidence of the e-mail as she stated that it had been deleted.

The Landlord explained that as the Tenants had failed to give her proper notice to end the tenancy, she now claims lost rent. The Landlord stated that she advertised the rental unit straight away to mitigate her loss and found new renters for September 15, 2014. Therefore, the Landlord only seeks to recover half a month's of lost rent in the amount of \$725.00.

The Tenants testified that they provided the Landlord with their forwarding address for the return of their security deposit by e-mail in the first week of September 2015. The Tenants made their Application on September 29, 2014 based on the fact that the Landlord had failed to make an Application within the time limits stipulated by the Act.

The Landlord confirmed receipt of the Tenant's forwarding address by e-mail on September 4, 2015. However, the Landlord did not make an Application to keep the Tenant's security deposit until January 19, 2015.

The Tenants explained that they were seeking double the return of their security deposit minus \$145.40 for utilities they owed to the Landlord. The Landlord did not dispute and confirmed the amount of utilities owed by the Tenants.

Analysis

In relation to the Tenants' Application for double the return of their security deposit, I make the following findings. Section 38(1) of the Act requires a landlord to make an Application within 15 days after the latter of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing if they intend to claim against it and not return it. Section 38(6) of the Act provides that if a landlord fails to

make an Application within the 15 day time limit then the landlord must pay the tenant double the amount of the security deposit.

While the Act does stipulate e-mail as a method for serving documents, I accept the undisputed evidence that the Landlord received the Tenants' forwarding address in writing in an e-mail on September 4, 2015. While the Landlord did make an Application to keep the Tenants' security deposit on January 19, 2015, this was not done within the 15 day time limit stipulated by the Act. Therefore, pursuant to Section 38(6) of the Act, the Landlord is liable to return double the Tenants' security deposit in the amount of \$1,450.00 (\$750.00 x 2) minus the undisputed utilities the Tenants owe of \$145.04.

As the Tenants have been successful in their Application, I also award them the filing fee of \$50.00 pursuant to Section 72(1) of the Act. Therefore, I award the Tenants a total of **\$1,354.60**.

In relation to the Landlord's Application, I make the following findings. Section 45(1) of the Act explains the tenant's obligations when ending a month to month tenancy. The Act states that a tenant must give the Landlord a notice of at least one clear rental month before ending the tenancy and this must be done in writing in a format required by Section 52 of the Act.

The Tenant testified that she provided the Landlord with both written and verbal notice to end the tenancy before the month of September 2014. However, the Landlord disputed this testimony and the Tenant provided insufficient evidence to satisfy me that a notice to end tenancy which complied with Section 52 of the Act was served to the Landlord one clear month before the tenancy was ended. I find that the Tenant's oral evidence alone was not sufficient in this case for me to accept it.

Therefore, I find the Tenants failed to give proper notice to end the tenancy and therefore they are liable to pay the Landlord for the subsequent rental loss incurred. I find the Landlord mitigated rental loss pursuant to Section 7(2) of the Act and only suffered half a month of rental loss for August 2014. Therefore, I award the Landlord the rental loss claimed for September 2014 in the amount of \$750.00.

As the Landlord has been successful in her Application, I also award her the filing fee of \$50.00 pursuant to Section 72(1) of the Act. Therefore, I award the Landlord a total of **\$775.00**.

The Act allows me to offset claims awarded to each party. The Landlord is awarded a total amount of \$1,354.60 and the Tenants are awarded a total amount of \$775.00.

Therefore the Landlord is liable to pay the Tenants the balance of the claim in the amount of **\$579.60**.

The Tenants are issued with a Monetary Order pursuant to Section 67 of the Act in the amount of **\$579.60**. This order must be served on the Landlord and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if payment is not made in accordance with the Tenants' instructions. Copies of this order are attached to the Tenants' copy of this decision.

Conclusion

Both parties have been fully successful in their Applications. The Landlord is ordered to pay the Tenants the outstanding amount of \$579.60 after both monetary claims are offset with each other.

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: May 05, 2015

Residential Tenancy Branch

