



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MND MNDC FF

Introduction

This hearing dealt with applications from both the landlord and the tenant (NH) under the *Residential Tenancy Act* ("the *Act*"). The landlord applied for a monetary award for unpaid rent, damage or loss as a result of this tenancy pursuant to section 67 of the *Act*; authorization to retain all or a portion of the tenant's security deposit towards any monetary award; and recovery of the filing fee for this application from the tenant.

The tenant (NH) applied for a monetary award equivalent to the amount of his security deposits as a result of the landlord's failure to comply with the provisions of section 38 of the *Act* and recovery of the filing fee for his application from the landlord.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. Tenant NH testified that he represented all tenants as respondents to the landlord's application. Before the conclusion of this hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Background and Evidence

This tenancy began December 1, 2013 as a fixed term tenancy for one year. Before the end of the one year term, the tenants vacated the rental unit. On October 3, 2014, the tenants gave notice in email form to the landlord to inform that they intended to vacate the rental unit on November 1, 2014. The tenants vacated the rental unit on November 1, 2014 but did not provide a forwarding address on that date. The tenant (NH) testified that on November 12, 2014, he provided a forwarding address to the landlord by registered mail. The tenant (NH) testified that the mail was returned despite his using the landlord's address as provided on the tenancy agreement. The tenant (NH) testified that, on December 15, 2014, he supplied the forwarding address again to the landlord by registered mail.

The tenant (NH) applied to recover his security deposit and an award equivalent to the amount of his deposit for the landlord's failure to return his security deposit in compliance with the *Act*. The landlord filed and served a claim for a monetary award against the tenants with respect to unpaid rent as a result of the early termination of the fixed term tenancy by the tenants as well as damage to the rental unit. The landlord provided receipts and invoices for repairs as well as replacements of items within the rental unit. The landlord submitted photographic evidence demonstrating the condition of the rental unit when the tenants vacated.

While the parties did not agree on damage to the rental unit or any cost to the landlord as a result of the damage, the parties did agree that the tenants had failed to provide sufficient notice to the landlord to end the fixed term tenancy. As a result of that meeting of minds, the landlord and the tenant (NH) on behalf of all parties were able to resolve this matter by way of a settlement.

Analysis

During the hearing, the relevant legislation, including section 44 and 45 regarding the responsibilities of a tenant and landlord when a fixed term tenancy ends were reviewed;

44 (1) A tenancy ends only if one or more of the following applies:

(b) the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy...

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 72(2) of the *Act* was also reviewed;

72 (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other... the amount may be deducted

- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
- (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. Given the agreement reached between the parties during the proceedings, I find that the parties have settled their dispute and the following records this settlement as a decision:

The Parties mutually agreed as follows:

- 1) The landlord will retain the \$2000.00 security deposit provided by the tenants for this tenancy in full and final compensation for damage or outstanding rental arrears as a result of this tenancy.
- 2) These terms comprise the full and final settlement of all aspects of this dispute for both parties.

Conclusion

To give effect to the settlement reached between the parties and as discussed at the hearing, I allow the landlord to retain the \$2000.00 security deposit.

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: June 24, 2015

Residential Tenancy Branch