Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MND, MNDC, 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 a monetary order for $4200.00 and recovery of her $50.00 filing fee.

The landlord's application is a request for a monetary order for $3260.00 which includes the request for recovery of his $50.00 filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

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

Tenant's application

Background and Evidence

On August 10, 2014 the parties came to a verbal agreement for the tenant to rent this rental unit at $2100.00 per month.
The tenant paid a security deposit of $1050.00 and the pet deposit $1050.00 by e-mail transfer on August 11, 2014.

The tenants however never moved into the rental unit and the landlord subsequently rented the unit to someone else.

On October 24, 2015 the tenant sent the landlord a forwarding address in writing and a request for return of the security/pet deposit by registered mail which was signed for on October 29, 2015.

To date, the landlord has failed to return any or all of the security/pet deposit nor did the landlord apply for dispute resolution to keep any or all of the security/pet deposit.

The landlord stated that he was not aware that he had to apply for dispute resolution if he wanted to keep the security deposit.

The tenant is requesting an order for return of double the security/pet deposit

Analysis

Section 38 of the Residential Tenancy Act states that, if the landlord does not either return the security deposit, get the tenants written permission to keep all or part of the security deposit, or apply for dispute resolution within 15 days after the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing, the landlord must pay the tenant double the amount of security deposit.

The landlord has not returned the tenants security deposit or applied for dispute resolution to keep any or all of tenant's security deposit and the time limit in which to apply is now past.

This tenancy ended in September 2014 and the landlord had a forwarding address in writing by September 29, 2014 and there is no evidence to show that the tenant's right to return of the deposit has been extinguished.

Therefore the landlord must pay double the amount of the security deposit to the tenant.

The tenant paid a combined security/pet deposit of $2100.00 and therefore I order that the landlord pay $4200.00 to the tenant.

I also order that the landlord bear the $50.00 cost of the filing fee paid by the tenant for her dispute resolution application.

Landlord's application

Background and Evidence

As stated above, on August 10, 2014 the parties came to a verbal agreement for the tenant to rent this rental unit at $2100.00 per month, and the security/pet deposit was collected on August 11, 2014.

At this point the parties had agreed that the rental would go ahead and that the tenant would pay utilities, however the tenancy agreement had not yet been signed, nor had any amount been agreed upon for utilities.

During the month of August 2014 the landlord sent the tenant a proposed tenancy agreement for the tenant to sign, however when the tenant eventually accessed the proposed tenancy agreement, around the end of August 2014, the tenants did not agree with some of the clauses in the tenancy agreement, and therefore they sent an e-mail to the landlord stating that they would not be going forward with the tenancy and requesting the return of their security/pet deposit in the amount of $2100.00.

After receiving the tenants e-mail, stating they were not going to go forward with the tenancy, the landlord received an application to rent the unit from some other prospective tenants, and he informed them that he had accepted their application and that the unit was theirs if they wish to take it.

On September 6, 2014 and after the landlord had already offered to rent the unit to the new applicants, the above respondent/tenant contacted the landlord and informed the landlord that they were now willing to take the rental unit on the condition that the landlord withdrew the clause in the tenancy agreement requiring guests who stayed more than five days to pay a fee.

When the respondent/tenant told the landlord she was willing to rent the unit the landlord informed her that he had already offered it to some other prospective tenants for November 1, 2014, and was just waiting for confirmation back from them.

The respondent/tenant phoned a landlord again on September 10, 2014 and again told the landlord that they would take the unit; however again the landlord said that he was waiting to hear from the other people to whom he had offered the rental unit.

On September 11, 2014 the landlord informed the respondent/tenant that he was renting the unit to the other people to whom he offered the rental unit.

The landlord believes that the respondent/tenant should be held liable for his lost rental revenue for the month of September 2014 and October 2014 and for the cost of utilities for both those months.

The total amount the landlord is claiming is as follows:

September 2014 10 days lost rental revenue	$700.00
September 2014 utilities	$100.00
October 2014 lost rental revenue	$2100.00
October 2014 utilities	$300.00
Registered mail costs	$10.00
Filing fee	$50.00
Total	$3260.00

The respondent/tenant does not believe he should be held liable for any of these charges as she was willing to move into the rental unit, and it was the landlord that decided not to rent to her.

Analysis

It is my finding that a tenancy agreement was formed on August 11, 2014 when the tenant paid a security/pet deposit and agreed to pay rent of $2100.00 per month.

It is also my finding that it was the respondent/tenant ended the tenancy when she sent the e-mail to the landlord on September 2, 2014 stating they will not move forward and requesting the return of her security/pet deposit.

Section 7(2) of the Residential Tenancy Act states:

> (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Therefore once the tenant backed out of the tenancy agreement the landlord was required to attempt to minimize any losses by trying to re-rent the unit, and he did so, and informed new prospective tenants that he would rent the unit to them for November 1, 2014.

Once the landlord had offered to rent the unit to the new prospective tenants, the landlord was bound by that offer unless the prospective tenants decided not to rent the unit.

Therefore when the respondent/tenant later contacted the landlord and informed him that he they were now willing to rent the unit, the landlord was not in the position to do so, unless the new prospective tenants decided they did not want take the unit.

The respondent/tenant seems to believe that, since the landlord still held her security deposit, a tenancy still existed, however as stated above it's my finding that the tenant had ended the tenancy, and therefore on September 6, 2014 when the respondent/tenant told the landlord that they were now willing to move into the rental unit, this was a new offer to rent, and since the landlord had already offered the unit to some other prospective tenants he was not obligated to accept this new offer from the respondent/tenant.

The new prospective tenants did end up accepting the landlords offer to rent the unit and the unit was re-rented for November 1, 2014.

It is my finding therefore that the respondent/tenant is liable for the landlords lost revenue for the months of September 2014 and October 2014 for a total of $2800.00.

It is my decision however that I will not allow the landlords claim for utilities totaling $400.00, because the parties never came to any final agreement on how much utilities the tenant would pay. Both sides agree that utilities were discussed when the original verbal agreement was reached, however both sides also agree that no amount was ever agreed-upon.

I also deny the landlords request for registered mail charges as this is a cost of the dispute resolution process and I do not have the authority to award costs, other than the filing fee.

I will however allow the landlords request for recovery of the $50.00 filing fee that he paid for his application for Dispute Resolution.

I therefore Order that the tenant paid to the landlord $2850.00.

Conclusion

I have allowed $4250.00 in the tenant's application, and I have allowed $2850.00 in the landlord's application, and therefore I have set off the $2850.00 against the $4250.00 and I have issued an Order for the landlord to pay $1400.00 to the tenant.

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 09, 2015

Residential Tenancy Branch