



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, O, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* ("*Regulation*") or tenancy agreement, pursuant to section 67;
- authorization to retain the tenant's security deposit in partial satisfaction of the monetary order requested, pursuant to section 38;
- other unspecified remedies;
- authorization to recover the filing fee for this application from the tenant, pursuant to section 72.

This hearing also dealt with the tenant's cross-application pursuant to the *Act* for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement, pursuant to section 67;
- authorization to obtain a return of double the security deposit, pursuant to section 38; and
- authorization to recover the filing fee for this application from the landlord, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions, and to call witnesses.

Both parties confirmed receipt of each other's application for dispute resolution hearing packages. In accordance with sections 89 and 90 of the *Act*, I find that both parties were duly served with each other's applications.

The landlord testified that he served the tenant with a one-page witness statement from DG by way of registered mail, but the landlord could not locate the mailing receipt. The tenant confirmed that he did not receive a copy of the landlord's witness statement for this hearing. During the hearing, I read the statement aloud to the tenant. The tenant testified that he consented to me considering the landlord's witness statement for this hearing and my decision. Given that this matter settled, I find no need to consider the landlord's witness statement in my decision.

Issues to be Decided

Is either party entitled to a monetary award for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord entitled to a monetary award for unpaid rent?

Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the tenant entitled to a monetary award equivalent to double the value of his security deposit as a result of the landlord's failure to comply with the provisions of section 38 of the *Act*?

Is either party entitled to recover the filing fee for their application?

Background and Evidence

The landlord testified that this tenancy began on August 1, 2014 and was for a fixed term of one year ending on July 31, 2015. Monthly rent in the amount of \$1,300.00 was payable on the first day of each month. A security deposit of \$700.00 was paid by the tenant and the landlord continues to retain this deposit. I note that this amount is contrary to section 19 of the *Act*, which only permits a half month's rent to be collected for a security deposit, which in this case is \$650.00.

Both parties agreed that the tenant did not occupy the rental unit at any time during this tenancy. The tenant stated that he did not occupy the rental unit because of the poor condition and cleanliness of the rental unit as compared to the photographs of the unit provided to him by the landlord. Both parties agreed that the tenant signed the tenancy agreement but the landlord did not. Both parties provided a copy of the tenancy agreement for this hearing.

The tenant seeks the return of double his security deposit, totalling \$1,400.00, because the landlord failed to return his deposit within 15 days of the end of this tenancy and the provision of a forwarding address in writing. Both parties agreed that the tenant provided his forwarding address by way of an email to the landlord on August 5, 2014. The tenant stated that he did not receive a copy of the tenancy agreement or complete a condition inspection report with the landlord for this tenancy. The tenant also seeks to recover the \$50.00 filing fee from the landlord.

The landlord seeks \$1,560.00 because the tenant breached the fixed term tenancy agreement. The landlord stated that this amount is 10% of the total rent cost of \$15,600.00 that would have been owed by the tenant over the term of one year. Both parties agreed that the landlord re-rented the rental unit to a new tenant as of mid-August 2014. The landlord indicated that he suffered a rental loss, which the tenant disputes, when the tenant breached the fixed term lease.

Analysis

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. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that the landlord will retain \$650.00 from the tenant's security deposit;
2. Both parties agreed that the landlord will return the remainder of the tenant's security deposit in the amount of \$50.00 to the tenant by June 16, 2015;
3. Both parties agreed to withdraw their applications to recover the \$50.00 filing fee;
4. Both parties agreed that this settlement agreement constitutes a final and binding resolution of both the landlord's and tenant's applications at this hearing and any issues arising out of this tenancy;
5. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmation at the hearing

that they understood and agreed to the above settlement terms, free of any duress or coercion. Both parties confirmed that they understood the above terms to be legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

Conclusion

To give effect to the settlement reached between the parties, I order the landlord to retain \$650.00 from the tenant's security deposit and to return the remainder of the tenant's security deposit in the amount of \$50.00 to the tenant.

Both parties' applications to recover the \$50.00 filing fee are withdrawn.

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 16, 2015

Residential Tenancy Branch

