



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding David Burr Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNSD, MNDC, O, MNR

Introduction

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

The landlords application is a request for a monetary order for \$2000.00 and a request for recovery of the \$50.00 filing fee. The landlord also requested an order to keep the full security deposit towards the claim.

The tenants application is a request for a monetary order for \$1500.00 and recovery of the \$50.00 filing fee.

Issue(s) to be Decided

The issues are whether or not the landlords or the tenants have established a monetary order against the other, and if so in what amount.

Background and Evidence

The tenants paid a security deposit of \$500.00 on August 8, 2014 and the tenancy began on September 1, 2014.

The tenancy agreement was for a fixed term expiring June 15, 2015.

On November 24, 2014 the tenants inform the landlord in writing that they would be vacating the rental unit by November 30, 2014. The tenants also included their forwarding address on the November 24, 2014 letter.

The tenant subsequently vacated the unit and all the keys to the unit were surrendered on November 28, 2014.

The tenants paid the full December 2014 rent; however the rental unit was not re-rented until February 1, 2014 and therefore as of today's date the landlord is claiming lost rental revenue for the month of January 2015, for a total of \$1000.00. The landlord has

withdrawn his claim for February 2015 rent because as stated above the unit was re-rented.

The tenants stated that although they do not dispute the claim for lost rental revenue for January 2015, they believe that the full amount is covered by their security deposit which should be ordered double as the landlord failed to apply for dispute resolution within the 15 day time limit.

The tenants argued that they returned possession of the rental unit to the landlord on November 28, 2014, and the landlord had their forwarding address in writing by November 24, 2014, and therefore the landlord was required to apply for dispute resolution on or before December 13, 2014.

The landlord argued that he did not believe he had to return the security deposit until 15 days after the end of the fixed term in the tenancy agreement as it is his believe that that is when the tenancy ends.

Analysis

The landlords and tenants signed a fixed term tenancy agreement with an end of tenancy date of June 15, 2015 and the tenants breached that tenancy agreement by vacating before the end of the fixed term, and therefore the tenants are liable for any lost rental revenue that resulted from that breach.

In this case the landlords lost the full rental revenue of \$1000.00 for the month of January 2015 and therefore I allow the landlords claim for an order for that lost rental revenue.

It is also my finding however that the tenants are correct that the landlord failed to apply for dispute resolution within the required 15 day time frame.

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 did not get the tenants written permission to keep any or all of the security deposit, has not returned the tenants security deposit, and did not apply for dispute resolution within the 15 day time limit.

This tenancy ended on November 28, 2014 and the landlord had a forwarding address in writing by November 24, 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 \$500.00 security deposit to the tenant, for a total of \$1000.00.

As stated above the landlord had argued that he did not believe the tenancy ended until the end of the fixed tenancy term, however section 44(1)(d) the Residential Tenancy Act states:

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

(d) the tenant vacates or abandons the rental unit

Therefore this tenancy ended on November 28, 2014 when the tenants vacated the unit and returned possession to the landlord.

On their application the tenants had also requested that they be credited \$500.00 towards utilities that they believe the landlord is going to charge them, however I have no authority to make such an order. If the landlord's file a claim for utilities, the tenants will have a right to dispute that claim.

Conclusion

I have allowed \$1000.00 of the landlords claim, and I have allowed \$1000.00 of the tenants claim, and I therefore set off one claim against the other, and have issued no order.

Further since I have allowed equal amounts in both of these claims I further order that both the landlords and the tenants bear their own cost of the \$50.00 filing fee that they paid for their applications for dispute resolution.

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: July 28, 2015

Residential Tenancy Branch

