



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary order and an order to retain the security deposit and pet deposit. The hearing was conducted by conference call. The landlord and the named tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain all or part of the deposits?

Background and Evidence

The rental unit is a residence in Surrey. The tenancy began on August 19, 2014 for a fixed term ending June 18, 2015. The tenancy agreement provided that the tenants must move out at the end of the term. The tenancy agreement provided for monthly rent in the amount of \$1,750.00, payable on the first of each month. The tenants paid a security deposit of \$875.00 and a pet deposit of \$875.00 at the start of the tenancy.

There was a previous dispute resolution proceeding regarding this tenancy. The landlord served the tenants with a 10 day Notice to End Tenancy for unpaid rent. The Notice to End Tenancy was dated May 14, 2015. The Notice alleged that the tenants failed to pay rent in the amount of \$1,750.00 that was due on May 1, 2015. The Notice required the tenants to move out of the rental unit by May 24, 2015. The landlord applied by direct request proceeding for an order for possession and a monetary order for unpaid rent. By decision dated June 1, 2015, the landlord was granted an order for possession effective two days after service on the tenants and a monetary order in the amount of \$1,750.00 for the rent owed for May, 2015.

The landlord's application that is before me was filed on June 12, 2015. The landlord claimed payment of the sum of \$3,199.88. The landlord said in a written submission that the claim was made up of the following amounts:

• Unpaid rent (April 19 – May 18) that monetary order (file#)	\$1750
• Unpaid rent (May 19 – May 31) (Pro rate 13/31)	\$733.88
• Loss of Opportunity (contract ended June 18 without notice)	\$1016
• Estimated costs to repair/replace	\$1450
• Damage and pet deposit back to tenant	-\$1750
Claims from tenant	\$3199.88

The landlord provided some photographs of the rental property. He claimed that the hardwood floor was damaged and would have to be replaced at a cost of \$1,000.00. He said another section of floor had water damage and the estimated repair cost was \$100.00. The landlord said a kitchen light cover was missing and said the estimated repair cost was \$50.00. The landlord said the yard was not maintained and claimed \$200.00 as the estimated cost for yard maintenance. The landlord did not submit any quotations or invoices to support the claims.

The tenant disputed all of the landlord's claims for damage to the rental property. He said there was no condition inspection of the rental unit when the tenants moved in. The tenant also referred to the addendum to the tenancy agreement drafted by the landlord. The addendum provided in part that:

The tenants understand that this is a so called "9999" old house. Although, the current condition is GOOD after the landlord has done significant improvements in the past, the future condition will not be warranted. Tenants agree this is not a subject to dispute with landlord (reproduced as written)

The tenant testified that any damage to the rental unit was either pre-existing, or caused by the landlord's handyman. The tenant submitted a photograph of the rental property; he said that it showed that the lawn was mowed and well-manicured, contrary to the landlord's testimony. The tenant said that he was never invited to participate in a condition inspection and he submitted that the landlord failed to provide any receipts or invoices to support his damage claims.

With respect to the claims for unpaid rent, the tenant said that the landlord has already received an award for unpaid rent for the entire month of May in the amount of \$1,750.00 and he is also claiming \$733 for part of May rent when he already has a monetary order. The tenant also disputed the landlord's claim for "loss of opportunity". The tenant said that the tenancy ended because the landlord evicted the tenant and not

because they chose to end the tenancy early. The tenant submitted that the landlord did not provide any evidence to show that he took any steps to advertise the property for rent after he gave the tenants the Notice to End Tenancy.

Analysis

The landlord alleged at the hearing that rent was paid on a monthly basis for the period from the 19th of one month to the 18th of the following month. The landlord has submitted contradictory documents and evidence. He submitted documents in support of the direct request application, including the 10 day Notice to End Tenancy that declared the tenants failed to pay rent for May in the amount of \$1,750.00. At this hearing the landlord alleged that the payment was for part of April and part of May, the tenant did not agree with this submission and claimed that rent was paid on a month by month basis. I find that the landlord has already received an award for unpaid rent for May and he is not entitled to a further award for rent for any part of April or May; these claims are dismissed without leave to reapply.

The tenancy agreement specified that the tenancy was for a fixed term ending June 18, 2015. The agreement required the tenants to move out at the end of the fixed term. The tenancy ended because of the tenants' failure to pay rent. I find that the landlord's claim for: "Loss of Opportunity" is a mischaracterization of his claim because he was free to use the rental unit for any purpose he chose after the end of the fixed term, but he did not receive payment of rent to the end of the fixed term.

The landlord has received a monetary award for May rent. He was unable to re-rent the unit for the remainder of the fixed term and I find that he is entitled to pro-rated rent from May 31, 2015 to June 18, 2015 in the amount of \$1,050.00.

The landlord did not submit a condition inspection report to establish the condition of the rental unit at the start of the tenancy. The landlord specified in the tenancy agreement that the rental unit was an old house without mentioning particular defects. He has not provided invoices or quotations for the amounts claimed for repairs. I find that the landlord has failed to prove, on a balance of probabilities, that the tenants caused damage to the rental unit that exceeded normal wear and tear, or that he is entitled to a monetary award for damage to the rental unit. The landlord's claim for the cost of repairs is dismissed without leave to reapply.

Conclusion

The landlord's claims have been dismissed without leave to reapply save for an award of \$1,050.00 for pro-rated rent for part of June. The landlord has been largely unsuccessful in this application and I decline to award recovery of the filing fee. I order

that the landlord retain the sum of \$1,050.00 from the security deposit and pet deposit that he holds, in full and final satisfaction of this award.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of his monetary claim. Because the claim has been allowed in an amount less than the deposits held by the landlord it is appropriate that I order the return of the balance of the tenants' security deposit and pet deposit; I so order and I grant the tenant a monetary order in the amount of \$700.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

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: December 15, 2015

Residential Tenancy Branch

