



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the Tenant makes claims a monetary order in the sum of \$850 for double the security deposit including the cost of the filing fee.

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$850 for loss of rent.
- b. An order to retain the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered. The tenant originally rented a one bedroom unit in the rental property. She subsequently rented the 2 bedroom unit. I ordered that the Application for Dispute Resolution filed by both parties be amended to identify the dispute address as the 2 bedroom unit.

Both parties were given a full opportunity to present evidence and make submissions. At the start of the hearing the tenant asked whether the Branch would provide her with an interpreter. Rule 6.7 of the Rules of Procedure provide as follows:

6.7 Party may be represented or assisted

A party to a dispute resolution hearing may be represented by an agent or a lawyer and may be assisted by an advocate, an interpreter, or any other person whose assistance the party requires in order to make his or her presentation.

The Rules of Procedure permit a party to obtain the assistance of an interpreter but the Branch does not provide an interpreter especially where a party has not made a request to the Branch prior to the hearing. The tenant did not request an adjournment. I determined it was appropriate to proceed with the hearing given the length of time since the filing of their respective claims. The tenant's evidence in the form of her oral

testimony, written submissions and oral summaries provided in digital form was competently presented and carefully considered. .

Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. There is a dispute between the parties regarding the exchange of documents.. The tenant testified she gave the landlord a number of documents which the landlord denies receiving both at the time and subsequently with the tenant's materials.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the tenant was served on the landlord by mailing, by registered mail to where the landlord resides on August 25, 2015. I find that the Application for Dispute Resolution filed by the landlord was served on the tenant by mailing, by registered mail to where the tenant resides on September 4, 2015.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to an order for double the security deposit?
- b. Whether the tenant is entitled to an order to recover the cost of the filing fee?
- c. Whether the landlord is entitled to a monetary order and if so how much?
- d. Whether the landlord is entitled to retain the security deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The tenant rented a one bedroom unit in the rental property commencing September 1, 2014. The rent was \$650 per month and she paid a security deposit of \$325.

At the end of May 2015 the tenant asked if she could rent the neighboring 2 bedroom unit in the rental property. The landlord agreed and the parties signed a written tenancy agreement that provided the tenant would pay rent of \$850 per month payable in advance on the first day of each month and a security deposit of \$400.

There was a delay in the payment of the rent. On June 11, 2015 the tenant paid \$1200. The landlord issued a receipt that stated \$800 for rent (\$50 less than the agreed amount) and \$400 for a security deposit.

There was a dispute between the parties as to the return of the security deposit from the one bedroom rental unit. The landlord took the position that the damages exceeded the

amount of the security deposit. The tenant alleged that she paid the landlord \$650 rent for the one bedroom unit for June. She produced a receipt to that effect. The landlord denies the tenant paid the rent for the one bedroom apartment and testified the receipt relied on by the tenant is fraudulent.

The tenant vacated the rental property at the end of June. The landlord testified the tenant failed to give her notice. The tenant refers to a letter dated May 28, 2015 produced in her materials parties that purports to give notice to end the tenancy on June 30, 2015. The Notice does not identify whether it is for the one bedroom or two bedroom unit and it is not signed by the tenant. The landlord testified she never received this letter at the time. Further, it does not make any sense that a tenant would move to the 2 bedroom unit, pay the rent and security deposit on June 11, 2015 when she was intending to vacate the rental unit 19 days later at the end of June. The landlord also testified the tenant failed to include this document in the materials provided to her by the tenant.

The landlord acknowledges receipt of a letter from the tenant dated July 8, 2015 when the tenant requests that the landlord mail her deposit immediately to an e-mail address.

The landlord testified the first time she obtained the tenant's forwarding address in writing was when she was served with the tenant's Application for Dispute Resolution on August 26, 2015. The tenant referred to a letter in her materials dated July 22, 2015 which provides a forwarding address and contains a request for the return of the security deposit. The landlord denies receiving this letter. The landlord also testified this letter was not included in the tenant's materials. The tenant originally testified she sent this letter by registered mail. I asked for the tracking number. The tenant testified she must have lost the receipt as she could not locate the tracking number.

The landlord filed an Application for Dispute Resolution on September 4, 2015. She testified that after getting information from a Residential Tenancy Information Officer she returned the \$400 security deposit by mail on September 5, 2015. That package was returned to her as she failed to include the tenant's unit number. She amended the application and attempted to personally deliver the \$400 security deposit cheque on September 14, 2015. The tenant refused to accept it because it was not a doubling of the security deposit. The landlord mailed the \$400 cheque to the tenant on September 15, 2015. The tenant cashed the cheque.

The claims before me relate to the 2 bedroom unit. The parties have advised me they have both filed a claim relating to the 1 bedroom unit which is scheduled to be heard in April 2016.

Tenant's Application:

Law

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

Analysis

The tenants paid a security deposit of \$400 on June 11, 2015. I determined the tenancy ended on June 30, 2015. The Act requires that the tenant give the landlord her forwarding address in writing and wait 15 days to see whether the landlord complies with section 38 before she can commence her claim. The tenant alleged she provided the landlord with her forwarding address in writing by registered letter dated July 22, 2015. The landlord denies receiving it. The tenant's testimony relating to the service of this document was insufficient. She initially testified she served it by registered mail. However, when asked she stated she could not find the receipt and could not provide the tracking number. After hearing the disputed evidence I determined the tenant failed to prove that she provided the landlord with her forwarding address in writing in July as alleged. I accept the evidence of the landlord that the first time she received the tenant's forwarding address was when she received the tenant's Application for Dispute Resolution.

As a result I dismissed the tenant's application for the return of double the security deposit. The landlord filed a claim to retain the tenant's security deposit within 15 days of receiving the tenant's Application for Dispute Resolution. The landlord has since returned the \$400 security deposit. I dismissed the tenant's claim for the cost of the filing fee as the tenant failed to prove she served her forwarding address in writing before she commenced her claim.

Landlord's Application:

With respect to each of the landlord's claims I find as follows:

- a. I determined the landlord is entitled to \$50 for the failure to pay all of the rent for June 2015.

- b. The Residential Tenancy Act provides that where a tenant wishes to end a month to month tenancy, the tenant must give written notice in accordance with section 52 of the Act on or before the end of the rental payment period to be effective at the end of the ensuring rental payment period.

After carefully considering the dispute evidence I determined the tenant failed to prove that she gave the landlord written notice. The tenant testified she gave the landlord the letter dated May 28, 2015. I prefer the evidence of the landlord to that of the tenant. The landlord denies the tenant gave that document to her. It is not credible that a tenant would move from a one bedroom to a two bedroom rental unit after she has given written notice to end the tenancy a month later without further discussions taking place. I determined the tenant failed to prove she gave landlord one month notice ending the tenancy for the two bedroom unit at the end of June.

Further, even if she gave the Notice the evidence given by the tenant indicates the Notice does not met the requirements of a valid Notice to End Tenancy as set out in section 52 of the Residential Tenancy Act which provides as follows.

“52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.”

The Notice relied on by the tenant is not sufficient in that the tenant failed to sign it and it does not give the address of the rental unit in terms of the civic address and whether it relates to the one bedroom or two bedroom unit.

I determined the landlord sufficiently attempted to mitigate her loss but she was not able to rent the 2 bedroom rental unit for July and suffered a loss of rent of \$850.

In summary I determined the landlord has established a claim against the tenant in the sum of \$900 plus \$50 for the cost of the filing fee for a total of \$950.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion

In summary I dismissed the tenant's application. I granted the landlord's application and I ordered that the tenant pay to the landlord the sum of \$900.

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 11, 2015

Residential Tenancy Branch

