



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord and an application by the Tenant pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord applied on September 4, 2015 for:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on February 15, 2016 for:

1. An Order for the return of double the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Tenant entitled to return of the security deposit?

Background and Evidence

The tenancy started on January 1, 2015 and ended on August 28, 2015. Rent of \$1,400.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$700.00 as a security deposit. The Tenant informed the Landlord on August 28, 2015 that the tenancy was over. The Tenant asked the Landlord to use the dispute address as her forwarding address and the Landlord has never received any other forwarding address from the Tenant. It is noted that the Tenant used this same address in the Tenant's application

The Landlord states that a new tenant was found at the same rental rate for a tenancy start of September 17, 2015. The Landlord claims unpaid rent of \$700.00 and withdraws the claim for the filing fee.

The Tenant states that she attended the rental unit on September 30, 2015 and found a new tenant in the unit. The Tenant states that she believes that the new tenancy started earlier than

September 17, 2015 but that she has no evidence to support that belief. The Tenant states that she was aware of the requirement for a one month notice to end the tenancy but that she had to move when she did.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Tenant agreed that the Landlord was provided with the dispute address as the forwarding address and as the Tenant used this address as well for the Tenant's application I find that, in the circumstances, the Landlord received the forwarding address at the same time the tenancy ended or shortly thereafter. As the Landlord made its application within 15 days of the end of the tenancy I find that the Tenant is not entitled to return of double the security deposit and I dismiss this claim.

Section 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice, and
- (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Section 53 of the Act provides that where a tenant gives a notice to end the tenancy for a date that does not comply with the Act, the notice is automatically corrected to the correct date. As the Tenant's notice was given to the Landlord on August 28, 2015 I find that the notice was automatically corrected to a tenancy end date of September 30, 2015 and that the Tenant was obliged to pay the rent for this month. I find therefore that the Landlord is entitled to the claimed unpaid rent amount of \$700.00. I order the Landlord to retain the security deposit of \$700.00 in full satisfaction of the claim.

Conclusion

The Tenant's application is dismissed. I Order the Landlord to retain the security deposit plus interest of \$700.00 in full satisfaction of the claim.

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: March 08, 2016

