



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

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

- a. A monetary order in the sum of \$500 for loss of rent caused by the Tenant's failure to give sufficient notice.
- b. 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.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the tenant by regular mail. With respect to each of the applicant's claims I find as follows:

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?
- b. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties failed to produce a written tenancy agreement. The evidence is confusing and in dispute. Unfortunately the landlord failed to produce receipts or an accounting of any form.

After carefully considering all of the evidence I make the following determination:

- The tenant rented the rental unit around the middle of July 2014. I find that the parties agreed the rent would be \$500 per month. At that time the tenant gave the landlord \$1000. This was to be applied by way of \$500 for the security deposit and \$500 for the last month rent. The Residential Tenancy Act permits a landlord to obtain a security deposit up to a maximum of ½ of a month rent. It does not permit a landlord to demand the last month rent in advance.
- Some time between July 15 and July 31, the tenant paid to the landlord the sum of \$250 which was to cover the rent for this period.
- The tenant testified she paid \$250 in rent for August around the middle of August. The landlord disputes this saying the tenant failed to make any rent payments for August.
- Near the end of August the tenant advised the landlord that she was vacating the rental unit at the end of August. She left at that time.

Analysis

There is no dispute between the parties that the rent for the period July 15, 2015 to July 31, 2015 has been paid.

I prefer the evidence of the tenant to the landlord and I find that she paid rent in the sum of \$250 for August. The landlord has an obligation to ensure receipts are given when rent is paid in cash and failed to do so. The landlord demanded and obtained a security deposit of a full month rent in the sum \$500. This is not permitted under the Residential Tenancy Act. However, the Act permits the parties to apply an overpayment of the security deposit to rent. I determined the rent for August has been paid by way of the \$250 payment from the tenant to the landlord and the application of \$250 of the security deposit.

The tenant vacated prior to September 1, 2015. The tenant failed to give the landlord the required one month notice in writing that she was vacating in accordance with the Residential Tenancy Act. I determined the landlord is entitled to apply the last month rent which she holds to the rent for September.

The landlord holds \$250 of the security deposit. I do not have the jurisdiction to make an order relating to the security deposit as the landlord did not make this claim in the Application for Arbitration and I did not receive any evidence as to whether either party has disentitled herself from making such a claim. If the parties are unable to agree, either party can file an Application for Dispute Resolution to make a claim for it.

Conclusion

In conclusion I determine the tenancy ended in accordance with the Residential Tenancy Act on September 30, 2015 and the rent has been fully paid for this period. The landlord presently holds \$250 of the tenant's money as the security deposit. If the parties are unable to agree both parties should obtain legal help and either party has the right to file a new Application to recover the security deposit held by the landlord.

I dismissed the landlord's claim for the cost of the filing fee as the landlord's failure to keep records and receipt caused many of the problems.

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 24, 2016

Residential Tenancy Branch