



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenant. Both the landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on July 1, 2015 as a one-year fixed-term tenancy, with monthly rent of \$825.00 due in advance on the first day of each month. The tenancy agreement contained one clause indicating that if the tenant vacated the unit prior to the end of the fixed term the security deposit would not be returned. Another clause indicated that the rental was for one person only, and if there was an additional person living in the unit permission would be required and the rent would increase to \$975.00 per month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$400.00.

In August 2015 the tenant asked the landlord if his girlfriend could move in. The landlord told the tenant that his girlfriend could move in if they agreed to pay \$1,000.00 per

month rent. On August 28, 2015 the tenant gave the landlord his notice to vacate by September 30, 2015 and his forwarding address in writing. The tenancy ended on September 30, 2015. The landlord made their application to keep the security deposit on September 29, 2015.

Landlord's Evidence

The landlord stated that as set out in the tenancy agreement, the tenant forfeited his right to the return of the security deposit because he ended the tenancy before the end of the fixed term. The landlord also stated that they believed the tenant's girlfriend did move in. The landlord has claimed the \$400.00 security deposit on this basis.

Tenant's Evidence

The tenant submitted that the landlord breached the term in the tenancy agreement that would have allowed the tenant's girlfriend to move in at \$975.00 per month, and therefore the agreement was voided. The tenant denied that his girlfriend moved in. The tenant stated that the landlord did not do a walk-through with him. The tenant claimed double recovery of his deposit, in the amount of \$800.00.

Analysis

Landlord's application

Under section 20 of the Act, a landlord must not require, or include as a term of a tenancy agreement, that the landlord automatically keeps all or part of the security deposit or the pet damage deposit at the end of the tenancy agreement. I find that in this case the clause in the tenancy agreement allowing the landlord to keep the security deposit if the tenant breaches the fixed term is not permissible under the Act. Therefore, the landlord is not entitled to retain the security deposit as claimed.

Tenant's Application

The tenant provided a forwarding address in writing on August 28, 2015 and the tenancy ended on September 30, 2015. The landlord applied to keep the security deposit on September 29, 2015. The landlord therefore applied in time to keep the deposit. The landlord did not claim the deposit for damage done to the unit, and therefore extinguishment does not apply in this case. The tenant is entitled to return of the base amount of the security deposit only.

Filing Fees

As the landlord's application was not successful, they are not entitled to recovery of the filing fee for the cost of their application.

As the tenant's application was partially successful, he is entitled to recovery of the \$50.00 filing fee for the cost of his application.

Conclusion

The landlord's application is dismissed.

I grant the tenant an order under section 67 for the balance due of \$450.00. This order may be filed 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: April 27, 2016

Residential Tenancy Branch