



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

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

The Tenant applied on October 28, 2015 for:

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

The Landlord applied on October 15, 2015 for:

1. An Order to retain 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 either Party entitled to any portion of the security deposit?

Are the Parties entitled to recovery of their filing fees?

Background and Evidence

The tenancy started on September 25, 2014 on a fixed term to end September 30, 2015. The tenancy agreement provides that at the end of the term the Tenants must move out of the unit. At the outset of the tenancy the Landlord collected \$3,400.00 as a security deposit. The Tenants moved out of the unit on September 30, 2015. The

Landlord made its application after receiving the Tenant's forwarding address on October 14, 2015.

The Landlord states that in July 2015 the Tenants were offered a new tenancy agreement to start October 1, 2015 as the Tenants had indicated that they would stay longer if the rent did not change. The Landlord states that on September 1, 2015 the Landlord brought a new written tenancy agreement to the Tenants for signing. The Landlord states that the Tenants asked to pay the rent by electronic payment however the Landlord required cheques so the Tenants asked for a few more days in order to obtain the cheques. The Landlord states that he did not sign a copy of the agreement or leave a copy for the Tenants to sign.

The Landlord states even though the Tenants wanted to wait for the cheques before signing, the Landlord believed that the Tenants were planning to stay. The Landlord states that by September 9, 2016 he had not heard from the Tenants and despite the Landlord's attempts to communicate the Tenants did not talk to the Landlord until September 16, 2016 when they informed the Landlord that they would not be staying in the unit. The Landlord states that the Tenants then did not give the Landlord any notice and moved out of the unit on September 30, 2015. The Landlord argues that the Parties entered into an oral agreement to extend the fixed term of the tenancy agreement and that the Tenants then failed to give notice to end the tenancy. The Landlord claims lost rental income.

The Tenant states that while they originally did plan on staying for another term they were hesitant given the high rental amount. The Tenant states that on September 1, 2015 they did not sign the agreement because they needed more time to make a decision about staying and because they had no cheques and Landlord had insisted on cheques. The Tenant states that they told the Landlord that they were having financial problems and asked to rent out the basement. The Tenant states that they had earlier asked to rent out the basement portion but the Landlord refused.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. The written tenancy agreement in existence on September 1, 2015 contained a strict provision for the Tenants to move out of the unit at the end of the term, September 30, 2015. No notice was required of the Tenants to move out on that date. I accept the Tenant's persuasive evidence that the Landlord was aware of their financial concerns before and on September 1, 2015.

Given these circumstances and in the face of the written tenancy agreement in existence and a written tenancy agreement offered, I cannot find that the Tenants' oral request to wait for signing another agreement is evidence of the Tenants' acceptance of that other written agreement or any portion thereof. As such I find that the Landlord has not substantiated that the Tenants breached the tenancy agreement and I dismiss the Landlord's application. As the Landlord has no claim to any portion of the security deposit I find that the Tenants are entitled to its return.

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 Landlord made its application within 15 days of receipt of the Tenants' forwarding address I find that the Tenant is not entitled to return of double the security deposit.

As the Tenants' application has had merit I find that the Tenants are entitled to recovery of their **\$50.00** filing fee for a total entitlement of **\$3,450.00**.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$3,450.00**. If necessary, 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: May 06, 2016

Residential Tenancy Branch