



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WAYNE & NATIONAL
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes Tenant MNSD, FF
 Landlord MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with cross applications for Dispute Resolution filed by both the Landlord and the Tenant.

The Landlord filed seeking a monetary order for compensation for unpaid rent, compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenant's security deposit and to recover the filing fee for this proceeding.

The Tenant filed for the return of double the security deposit and to recover the filing fee for this proceeding.

Service of the hearing documents by the Landlord to the Tenant was done by registered mail on December 7, 2015, in accordance with section 89 of the Act.

Service of the hearing documents by the Tenant to the Landlord was done by personal delivery on December 2, 2015, in accordance with section 89 of the Act.

The Landlord and Tenant both confirmed that they received the other's hearing packages.

Issues to be Decided

Landlord:

1. Is there unpaid rent and if so how much?
2. Is there a loss or damage to the Landlord and if so how much?
3. Is the Landlord entitled to compensation for loss or damage and if so how much?
4. Is the Landlord entitled to retain the Tenant's deposit?

Tenant:

1. Is the Tenant entitled to recover double the security deposit?

Background and Evidence

This tenancy started on November 1, 2004 and the last tenancy agreement was a fixed term tenancy from March 1, 2014 to February 28, 2015. Rent was \$1,059.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$425.00 at the start of the tenancy.

The Tenant's agent said the Tenant gave the Landlord verbal notice to end the tenancy on August 5, 2014 for September 30, 2014. The Tenant's agent said the Landlord agreed to this and told the Tenant they did not have to clean the unit as the Landlord was renovating the unit after they moved out. The Tenant's agent said the Landlord said the Tenant would get her security deposit back within 2 weeks of the end of tenancy. The Tenant's agent continued to say they moved out of the unit on September 28, 2014 and renovation to the unit started 2 or 3 days after they moved out. The Tenant's agent said they know this because the Tenant went back to the rental unit to collect mail. The Tenant's agent continued to say the Tenant received a letter from the Landlord on October 10, 2014 saying that the Tenant owed the October, 2014 rent of \$1,059.00 a liquidated damage fee of \$200.00 and the Landlord was keeping the Tenant's security deposit and interest of \$440.05. The Tenant's agent said the Landlord broke his promise to give the security deposit back and he is claiming rent for the month of October when the Landlord was renovating the rental unit. The Tenant said the Landlord could not have rented the unit out for October and it was never the Landlord's plan to rent the unit for October because he was renovating it. The Tenant's agent said the Tenant is not responsible for the October rent of \$1,059.00.

Further the Tenant's agent said the Tenant has applied for double her security deposit back in the amount of \$425.00 X 2 = \$850.00 plus the interest on the deposit of \$15.05. The Tenant's agent said the Landlord did not apply to keep the Tenant's security deposit within the guidelines of the Act and the Landlord did not return it to the Tenant.

The Landlord said the Tenant only gave him verbal notice that she was moving out and the Act requires written notice therefore the Tenant did not give him proper notice to end the tenancy. Further the Landlord said this is a fixed term tenancy to February 28, 2015 therefore the Tenant moving out early on September 28, 2014 is a breach of the tenancy agreement and the tenancy agreement says there is a \$200.00 liquidation fee for ending the tenancy prior to the fixed term of the tenancy.

Further the Landlord said he was not able to rent the unit until November 1, 2014 after the renovations were completed so he lost the rental income for October, 2014. The Landlord said the Tenant is responsible for the October, 2014 rent because of the fixed term tenancy.

The Landlord said his claim is as follows:

Lost rental income	\$1,059.00	
Liquidated damages	\$ 200.00	
Filing fee	<u>\$ 50.00</u>	
Subtotal		\$1,309.00.

Less Security Deposit	\$ 425.00	
Interest on Deposit	<u>\$ 15.05</u>	
Subtotal		<u>\$ 440.05</u>
Net Claim		<u>\$ 868.95</u>

The Tenant said in closing that the Landlord did not do a move out inspection and the Landlord did not apply to keep the Tenants security deposit so the Landlord should not have a claim on the deposit. As well the Landlord renovated the unit in October so it was not possible to rent the unit. The Tenant said they were good long term tenants and the Landlord broke his promise to them by not returning the security deposit.

The Landlord agreed he did not make an application to keep the Tenant's security deposit after the letter of October 10, 2014 saying the Landlord was not returning the security deposit to the Tenant. The Landlord said the tenancy was for a fixed term and the Tenant broke the agreement by moving out early so he is entitled to lost rental income and the liquated damage fee.

Analysis

I have reviewed the written evidence and the testimony which included the tenancy agreements for this tenancy. In reviewing the tenancy agreement I accept the clause that says a fee of \$200.00 is agreed to be paid by the tenant to the landlord as liquidated damages if the tenant ends the tenancy prior to the fixed term of the tenancy. In this situation the Tenant ended the tenancy on September 28, 2014 which was before the fixed term of the tenancy of February 28, 2015. I award the Landlord \$200.00 for liquated damages.

Section 7 (2) of the Act says a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement **must** do whatever is reasonable to minimize the damage or loss.

The Landlord says he had a loss of rental income in October, 2014 of \$1.059.00 because the Tenant moved out early and he was unable to rent the unit for October, 2014. Pursuant to section 7 (2) a landlord **must** do whatever is reasonable to minimize the damage or loss. I find the Landlord planned and completed renovations to the rental unit in October, 2014 so the rental unit was not available for rent. As the unit was not available for rent; I find the Landlord did not mitigate or minimize the loss of rental income. I dismiss the Landlord's claim for lost rental income due to the unit not being available for rent.

With respect to the Tenant's application for double her security deposit in the amount of \$425.00 X 2 = \$850.00 plus \$15.05 for interest on the deposit:

Section 38 (1) of the Act says that except as provided in subsection (3) or (4) (a), within 15 days after the later of

- (a) the date the tenancy ends, and
- (b) the date the landlord receives the tenant's forwarding address in writing,

the landlord must do one of the following:

- (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;
- (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.

And Section 38 (6) says if a landlord does not comply with subsection (1), the landlord

- (a) may not make a claim against the security deposit or any pet damage deposit, and
- (b) must pay the tenant double the amount of the security deposit, pet damage deposit, or both, as applicable.

I find from the Tenant's testimony and written evidence that the Landlord had the Tenant's forwarding address on or before October 10, 2014 because the Landlord wrote the Tenant a letter addressed to the Tenant's forwarding address on October 10, 2014. The Landlord did not repay security deposit to the Tenant within 15 days of the end of the tenancy or after receiving a forwarding address from the Tenant, nor did the Landlord apply for dispute resolution by October 25, 2014. Consequently I find for the Tenant and grant an order for double the security deposit of \$425.00 in the amount of \$850.00 plus \$15.05 of interest on the deposit.

Further I dismiss the Landlord's request to retain the Tenant's security deposit.

As the Tenant has been successful in this matter I order the Tenant to recover the \$50.00 filing fee for this proceeding from the Landlord. As the Landlord has only been

partially successful in this matter I order the Landlord to bear the \$50.00 filing fee for his application, which he has already paid.

A monetary order has been issues to the Tenant for the following:

Double Security deposit	\$ 850.00
Interest on the deposit	\$ 15.05
Filing fee	\$ 50.00
Total	<u>\$ 915.05</u>
Less the liquated damage fee	<u>\$ 200.00</u>
Total owing to the Tenants	<u>\$ 715.05</u>

Conclusion

A monetary order has been issued to the Tenants' for \$715.05.

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: June 28, 2016

Residential Tenancy Branch