



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This was a cross-application hearing for Dispute Resolution. The matter was set for a conference call hearing at 1:00 p.m. on July 5, 2016.

The Landlords applied requesting a monetary order for unpaid rent or utilities; to keep all or part of the pet damage deposit or security deposit; and to recover the cost of the filing fee.

The Tenant applied for compensation for damage or loss under the Act, regulations, or tenancy agreement; for the return of the pet damage deposit or security deposit; and to recover the cost of the filing fee.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Tenant testified that after she made application for dispute resolution she never received the Notice of Hearing paperwork and was not able to serve the Landlord with Notice of her application and hearing. The Landlord confirmed that he was never served with the Tenants application.

Since the Landlord did not have any prior Notice of the Tenants claim, and evidence, the Tenant's application is dismissed.

The Landlords applied to keep all or part of the pet deposit or security deposit, which is the same issue that the Tenant listed in her application to resolve.

Issues to be Decided

- Are the Landlords entitled to unpaid rent?
- May the Landlords retain the pet deposit or security deposit in partial satisfaction of the claim for unpaid rent?
- Are the Landlords entitled to recover the cost of the filing fee for the application?

Background and Evidence

The parties testified that the tenancy commenced on July 1, 2014, as a month to month tenancy. Rent in the amount of \$425.00 was due on the first day of each month. The Tenant paid a security deposit of \$200.00 and a pet deposit of \$200.00 to the Landlord.

The Landlord testified that the Tenant moved out of the rental unit on November 28, 2016, without giving the Landlord proper Notice to end the tenancy. The Landlords testified that they were unable to rent the unit for the month of December 2015, and they suffered a loss of \$425.00 rent due to the Tenant moving out early.

The Landlords testified that the Tenant was also responsible for damage to the rental unit and the Tenant signed over \$200.00 of the security deposit on November 28, 2015.

The Landlords are requesting to keep the \$200.00 pet deposit in partial satisfaction of their claim and are seeking a monetary order of \$275.00.

The Landlords have provided documentary evidence of the Tenant's written letter of notice to end the tenancy. The Tenant's letter dated November 24, 2015, states that the Tenant is giving Notice to end the tenancy effective immediately.

The Tenant testified that she moved out on November 28, 2016. She stated that she gave insufficient Notice to end the tenancy because she was being threatened by other residents. She also testified that another resident took some of her possessions. The Tenant testified that she did not pay any rent to the Landlord for the month of December 2015.

The Tenant confirmed that she signed over the security deposit of \$200.00 to the Landlords at the move out inspection on November 28, 2015.

Section 45 of the *Act* states that a Tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 38 of the *Act* states 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 any security deposit or pet damage deposit to the Tenant or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Analysis

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

The Landlord applied to keep the security deposit and pet deposit with 15 days of the end of the tenancy. I find that the Tenant did not end the tenancy in compliance with the provisions in section 45 of the *Act*. The Tenant did not pay rent for the month of December 2015, and the Landlord was not able to rent the unit and suffered a loss of rent.

The Tenant provided insufficient evidence to support her testimony that she had to vacate without proper notice because she was in fear for her life.

I find that The Tenant owes the Landlords \$425.00 for rent for the month of December 2015. I order that the Landlords can retain the pet damage deposit of \$200.00 in partial satisfaction of their claim.

After offsetting the \$200.00 pet deposit from the \$425.00 owing for rent, the Tenant owes the Landlord \$225.00.

Section 72 of the *Act* gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlords were successful in their application, I order the Tenant to repay the \$50.00 fee that the Landlords paid to make application for dispute resolution.

I grant the Landlords a monetary order in the amount of \$275.00.

Conclusion

The Tenant did not give the Landlord proper Notice to end the tenancy and the Landlord suffered a loss of rent. The Tenant owes the Landlords \$425.00 for rent. The Landlord may retain the pet deposit in partial satisfaction of the claim.

I grant the Landlord a monetary order in the amount of \$275.00 comprised of \$225.00 for unpaid rent and \$50.00 for the application fee. This order must be served on the Tenant and may be enforced in Provincial 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: July 05, 2016

Residential Tenancy Branch