



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF; MNDC, MNSD, OLC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

This hearing also addressed the tenant's cross application for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, *Residential Tenancy Regulation* (the "*Regulation*") or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of the security deposit pursuant to section 38;
- an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement pursuant to section 62; and
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The tenant and landlord's agent (the "landlord") attended the hearing. The landlord confirmed he was an agent of the landlord's company named in this application, and had authority to speak on its behalf.

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 provide affirmed 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 a monetary order for unpaid rent?

Is either party entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, *Regulation* or tenancy agreement?

Is the landlord authorized to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested? If not, is the tenant authorized to obtain a return of all or a portion of the security deposit?

Is either party entitled to recover the filing fee for their application?

Is the tenant entitled to an order requiring the landlord to comply with the *Act*, *Regulation* or tenancy agreement?

Background and Evidence

On March 14, 2016 the parties signed a tenancy agreement indicating the tenancy was to begin on April 15, 2016 on a fixed term until April 30, 2017. Rent in the amount of \$4,000.00 was payable on the first of each month. Upon signing the tenancy agreement, the tenant remitted a security deposit in the amount of \$2,000.00 and half the first month's rent in the amount of \$2,000.00.

The tenant sent an email to the landlord on March 28, 2016 indicating that for reasons beyond his control he would not be moving into the rental unit April 15, 2016. The following day, on March 29, 2016 the tenant sent the landlord a letter "terminating the lease contract."

Upon receipt of the tenant's notification to terminate the lease, the landlord advertised the rental unit and secured a new tenancy effective May 1, 2016.

Landlord Claims

The landlord seeks a total of \$2,520.00 in damages.

Re-Rent Fee

The landlord seeks to recover the \$2,100.00 re-rental fee paid to the property management company to find an alternate tenant. The landlord submitted a copy of the receipt from the property management company.

Arbitration Administration Fee

The landlord seeks to recover the \$420.00 arbitration administration fee paid to the property management company. The landlord submitted a copy of the receipt from the property management company.

The landlord also seeks to recover the \$100.00 filing fee for this application from the tenant.

Tenant Claims

The tenant seeks the return of the half months' rent in the amount of \$2,000.00.

It is the tenant's position that despite him terminating the lease and providing a forwarding address to the landlord the landlord did not return his security deposit within the provisions of the *Act*. Therefore the tenant is now requesting double his security deposit in the total amount of \$4,000.00.

The tenant is also seeking to recover the \$100.00 filing fee for this application from the landlord.

Analysis

Pursuant to section 16 of the *Act*, the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The tenancy, that is, the right to occupy the unit, often begins at a later date. In this case, the tenancy agreement began on March 14, 2016 and the tenancy was to commence on April 15, 2016. Because the tenancy agreement began on March 14, 2016, this is when the provisions of the *Act* became enforceable in the relationship between the tenant and landlord.

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on April 30, 2017. Although the tenant provided written notice of his intent to end the tenancy on March 29, 2016, he attempted to end the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Pursuant to the *Residential Tenancy Policy Guideline, 30: Fixed Term Tenancies* ("Guideline 30"), neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties.

Neither party contended cause was the ground to end the fixed term tenancy. In an email dated April 19, 2016 the landlord wrote, "Please forward me your address so we can finalize the end of your lease." On this same date, the tenant emailed a response listing his forwarding address. As evidenced by this email, at some point the parties entered into some sort of discussion to mutually end the tenancy. However the parties have not provided a signed mutual agreement to end tenancy as part of their respective evidence packages. In the absence of a signed mutual agreement to end tenancy I find the tenant did not end this tenancy in accordance with the *Act*. I therefore find that this tenancy ended on April 15, 2016 when the tenant did not take scheduled possession of the rental unit.

Landlord Claims

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

In relation to the landlord's claim to recover the \$2,100.00 re-rental fee paid to the property management company, I find this expense occurred as a result of the tenant ending the fixed term tenancy early in contravention of section 45 of the *Act* and therefore award this monetary amount to the landlord.

I find the arbitration administration fee the landlord incurred was a direct result of the tenant exercising his right to file a dispute resolution hearing, which is not a violation of the *Act*. Therefore, I do not award any monetary compensation for the arbitration fee and dismiss this portion of the landlord's monetary claim.

As the landlord was partially successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application.

Tenant Claims

Based on my finding that the tenancy ended on April 15, 2016, I find the tenant is not entitled to the return of rent paid up to that date. For this reason I dismiss this portion of the tenant's monetary claim.

Section 38 of the *Act* establishes that a landlord has fifteen days from the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing to file an arbitration application claiming against the deposit, or return the deposit.

As per the testimony of the parties and submitted email, the tenant provided his forwarding address on April 19, 2016. Based on this date the landlord had to return the deposit or file an application no later than May 4, 2016. The landlord filed his application to retain the security deposit within this timeframe, on April 28, 2016. For this reason I find the tenant is not entitled to the return of double his security deposit and dismiss this portion of the tenant's claim.

As the tenancy has ended and as a landlord's compliance may only be sought in relation to an ongoing tenancy I dismiss this claim as well.

As the tenant was not successful in this application, I find that the tenant is not entitled to recover the \$100.00 filing fee paid for the application.

Set Off of Claims

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in the total amount of \$2,000.00 in partial satisfaction of the \$2,200.00 monetary award and I grant an order for the balance due of **\$200.00**.

Conclusion

I issue a monetary order in the landlord's favour in the amount of **\$200.00**.

I dismiss the landlord's monetary claim for the arbitration administration fee without leave to reapply.

The tenant's entire application is dismissed without leave to reapply.

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: September 8, 2016

Residential Tenancy Branch