



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

In the first application the landlords seek to recover a monetary award for April 2016 rent or loss of rental income.

In the second application the tenants seek to recover their \$500.00 security deposit, doubled pursuant to s. 38 of the *Residential Tenancy Act* (the “Act”).

All parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

Does the relevant evidence presented during the hearing show that the tenants were responsible for April rent? Does it show that s. 38 of the *Act* applies, resulting in a doubling of the deposit money held at the end of the tenancy?

Background and Evidence

The rental unit is a two bedroom basement suite in the landlord's home.

The tenancy started October 1, 2015. The tenants vacated the premises March 31, 2016. The monthly rent was \$1000.00, due on the first of each month, in advance. The tenants provided the landlords with a forwarding address in writing on April 1, 2016.

The tenants paid and the landlord holds a \$500.00 security deposit.

The tenants gave their notice to end the tenancy in a text message sent to the landlord March 5.

The landlords were on vacation on another continent between March 3 and March 27. Despite this, they attempted to locate a new tenant for April 1. They were unsuccessful but did find a new tenant for a tenancy starting April 15. At hearing they revised their claim against the tenants downward from \$1000.00 to \$500.00, being the rent lost for the first half of April.

The parties argued about the fact that the tenants brought and kept two dogs in the rental unit despite the fact that the tenancy agreement stated that no pets were allowed. That argument does not bear on the questions raised by the applications and so I need not attempt to reach any conclusions about it.

Analysis

Section 45 of the *Act* provides:

- 45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants' notice was given on March 5 and so, in accordance with s. 45(1)(b), could only be effective, at the earliest, on April 30.

Section 53 of the *Act* provides;

- 53 (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

The tenants notice therefore automatically corrected itself to be effective April 30; “the earliest date that complies with the section.”

The tenancy continued into April and the tenants were obliged to pay the rent when it came due on April 1. The landlords have suffered the loss of that rent but have mitigated their loss by re-renting. I find that the landlords are owed \$500.00.

The tenants are not entitled to a doubling of the deposit. The relevant portions of s. 38 of the *Act* provide:

38 (1) 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.

(a) the director has previously ordered the tenant to pay to the landlord, and

(b) at the end of the tenancy remains unpaid.

* * *

(6) 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.

The landlords' application was made April 5, 2016, within the fifteen day period prescribed by s. 38(1), and so the tenants are not entitled to the doubling of the deposit money.

Conclusion

The landlords are entitled to a monetary award of \$500.00 plus recovery of the \$100.00 filing fee.

The tenants' application must be dismissed.

I authorize the landlords to retain the \$500.00 security deposit in reduction of the amount awarded. There will be a monetary order against the tenants for the remainder of \$100.00.

This decision was rendered orally after the hearing and 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 02, 2016

Residential Tenancy Branch