



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing convened as a result of the Landlord's Application for Dispute Resolution filed on January 15, 2016 wherein the Landlord requested monetary compensation from the Tenant, authority to retain the Tenant's security deposit and to recover the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submissions to me.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

Issues to be Decided

1. Is the Landlord entitled to monetary compensation from the Tenant?
2. What should happen with the Tenant's security deposit?
3. Should the Landlord recover the filing fee paid to file her application?

Background and Evidence

The Landlord testified that this month to month tenancy began November 1, 2015. Monthly rent was payable in the amount of \$850.00 and the Tenant paid a security deposit in the amount of \$425.00 and a pet damage deposit in the amount of \$50.00 for a total of \$475.00 paid in deposits.

The Landlord further testified that the Tenant gave notice to end the tenancy by text message sent on December 14, 2015 indicating she would be vacating the rental unit by December 31, 2015.

Introduced in evidence were copies of the relevant text messages, including the one sent by the Tenant to the Landlord on December 14, 2015 which reads as follows:

*"Hi [Landlord]
I am sorry to inform you, but I am giving me and [T.] notice of living. We have found something more suitable for the both of us, for the first of January. I know this isn't a month, but I was hoping it would be alright for half months notice. This is the only opportunity that we have, so we must take it. I hope there are no hard feelings and I hope this can all work out alright."*

[Reproduced as Written]

The Landlord's response to this email was also provided and which indicated that in reply the Landlord wrote as follows:

*"hello [Tenant]
I gather your email meant to say you are moving out
December 30.
Please be sure to leave the place clean and keys on
the counter.
The caretaker will be over sometime after you leave to
view the apartment
Good luck with your new place.*

*Best regards
[Landlord]"*

The Tenant responded as follows:

*"I believe you mean the 31st? And when shall I be
Expecting my damage deposit back?"*

The Landlord then responded as follows:

*"Hello [Tenant]
Yes I assume the end of the month was your move out
date The caretaker has been notified of the sink plug
and he will come by to repair it
The caretaker will check after you have moved out to
ensure it is clean and in same condition as when
moved in.
Please leave the 2 tables I left for your convenience in
the apartment*

*The tenancy laws allow 15 days for it to be returned.
It will be returned in a timely manner.*

*I am at the family ranch for Christmas. We do not have
cell service out here. So I only get text occasionally if
we go to town. But I do get emails. If you have any
further problems please email to ensure I get the
message*

*Best regards
[Landlord]*

[Reproduced as Written]

Following the above the parties continued to communicate by text message regarding the Tenant's deposits. The Tenant requested their return and the Landlord informed the Tenant she was awaiting information from the tenancy branch. On January 19 the Landlord informed the Tenant she was required to provide her mailing address. On the same date, the Tenant provided her mailing address to the Landlord.

At the hearing the Landlord testified that she re-rented the rental unit as of January 18, 2016. She confirmed that the new renters paid half a month's rent and as such she sought compensation for \$475.00 representing the loss of half a month's rent. The Landlord also sought recovery of the \$100.00 filing fee.

The Landlord testified that the parties did not participate in a move in condition inspection. She also testified that the caretaker performed a move out condition inspection and confirmed the condition was "pretty good".

The Tenant also testified on her own behalf. She stated that she and the Landlord agreed that the tenancy would end at the end of December 2015 and as a result she should not be responsible for paying rent for any time following December 31, 2015.

The Tenant also testified that she thought she was "totally in the right" giving 2 weeks- notice and that the Landlord agreed she could move out such that it was a mutual agreement to end tenancy.

The Tenant also testified that she was not aware a move out inspection was being conducted, that she was not given an opportunity to participate and in any case was not given a copy of the report.

The Tenant testified that she participated in a move in condition inspection but did not sign the document.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

The Landlord seeks compensation representing loss of one half of the January 2016 rent in the amount of \$425.00.

The evidence shows that the Tenant gave notice to end the tenancy on December 14, 2016, with an intended effective date of December 31, 2016.

The Landlord was able to re-rent the rental unit as of January 18, 2016; the new renters paid half of the monthly rent amount such that the Landlord lost \$425.00 for the first half of January 2016's rent.

Section 45 of the *Residential Tenancy Act* deals with situations where a Tenant wishes to end a tenancy and reads as follows:

Tenant's notice

- 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.
- (2) A tenant may end a fixed term 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,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) 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.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

Pursuant to section 45, the effective date of the Tenant's notice was January 31, 2016. Fortunately, the Landlord was able to re-rent the unit as of January 18, 2016.

The Tenant alleges the she and the Landlord reached a mutual agreement to end the tenancy as of December 31, 2015 such that she should not be expected to pay rent for any portion of January 2016.

The Landlord denies any such agreement existed.

The text communications provided in evidence (and which has been reproduced in this my Decision) show the Landlord was aware the Tenant intended to vacate the rental unit as of December 31, 2016. This communication does not indicate that the Landlord agreed to forego her right to claim for monetary losses in the event the Landlord was not able to re-rent the unit as of January 1, 2016. Accordingly, I find the Landlord is entitled to recovery of the **\$425.00** in lost rent.

In her written submissions, the Tenant submits that the Landlord should be precluded from claiming against the deposits as she failed to perform the condition inspections in accordance with the *Act*.

Section 38 of the *Residential Tenancy Act* provides as follows:

Return of security deposit and pet damage deposit

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.

(2) Subsection (1) does not apply if the tenant's right to the return of a security deposit or a pet damage deposit has been extinguished under section 24

(1) [*tenant fails to participate in start of tenancy inspection*] or 36 (1) [*tenant fails to participate in end of tenancy inspection*].

(3) A landlord may retain from a security deposit or a pet damage deposit an amount that

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

- (b) at the end of the tenancy remains unpaid.
- (4) A landlord may retain an amount from a security deposit or a pet damage deposit if,
 - (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant, or
 - (b) after the end of the tenancy, the director orders that the landlord may retain the amount.
- (5) The right of a landlord to retain all or part of a security deposit or pet damage deposit under subsection (4) (a) does not apply if the liability of the tenant is in relation to damage and the landlord's right to claim for damage against a security deposit or a pet damage deposit has been extinguished under section 24 (2) [*landlord failure to meet start of tenancy condition report requirements*] or 36 (2) [*landlord failure to meet end of tenancy condition report requirements*].
- (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 evidence shows that the Landlord applied for dispute resolution within 15 days of receipt of the Tenant's forwarding address to retain the deposits.

However, by failing to perform incoming or outgoing condition inspection reports in accordance with the *Act*, the Landlord has extinguished her right to claim against the security deposit and pet damage deposit for *damage* pursuant to sections 24(2) and 36(2) of the *Act*.

A Landlord may apply to retain a security deposit towards unpaid rent however, as a pet damage deposit relates solely to potential *damage*, the Landlord was not able to claim against those funds and was therefore required to return the \$50.00 pet damage deposit within 15 days of receipt of the Tenant's forwarding address.

Section 38(6) provides that if a Landlord does not comply with section 38(1), the Landlord must pay the Tenant double the amount of the deposit. The legislation does not provide any flexibility on this issue. Accordingly, I award the Tenant **\$100.00** representing double the pet damage deposit paid.

As the Landlord has been substantially successful, I award the Landlord **\$100.00** for recovery of the filing fee paid.

In sum, I award the Landlord the amount of **\$525.00** representing \$425.00 for loss of one half of January 2016 rent as well as \$100.00 for the filing fee. As noted, the Tenant is entitled to **\$100.00** representing double her pet damage deposit. These amounts are offset against one

another such that the Landlord is entitled to compensation in the amount of **\$425.00**. I authorize the Landlord to retain the Tenant's **\$425.00** security deposit as payment of this amount.

Conclusion

The Landlord is entitled to compensation for one half of January's rent in the amount of \$425.00 in addition to the \$100.00 filing fee for a total of **\$525.00**.

The Tenant is entitled to the sum of **\$100.00** representing double the pet damage deposit paid pursuant to section 38 of the *Residential Tenancy Act*.

The net amount due to the Landlord is **\$425.00**; and as this equals the Tenant's security deposit, I authorize the Landlord pursuant to sections 38 and 72(2)(b) to retain the full amount of the Tenant's \$425.00 security deposit.

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 13, 2016

Residential Tenancy Branch