



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the compensation claimed?

Did the Landlord make its application to claim against the security deposit in the time allowed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are undisputed facts: The tenancy started on September 1, 2015 for a fixed term to expire August 31, 2016. Rent of \$850.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$425.00 as a security deposit. No move-in condition inspection was conducted with the Tenant. In mid-April 2016 the Tenant gave notice to end the tenancy and moved out of the unit on May 3, 2016. Without the Landlord’s permission the Tenant obtained a sublet tenant to move

into the unit and this 3rd party paid the full rent of \$850.00 for May, June and July 2016. The Landlord received the Tenant's forwarding address on June 1, 2016. The Landlord made its application for dispute resolution on July 1, 2016 and has not returned the security deposit.

The Landlord states that prior to the Tenant moving into the unit the Tenant's grandfather was present to conduct an inspection but could not speak English so an inspection was not done at move in. The Landlord states that no offer was made to the Tenant who moved into the unit on September 8, 2016 to conduct an inspection.

The Landlord states that the Tenant left a damaged mattress and mattress cover. The Landlord states that these items were not replaced and no rental discount was given to the 3rd party who moved in. The Landlord claims \$1,280.00.

The Landlord states that because the Tenant obtained a 3rd party to sublet the unit without the Landlord's permission and because the Tenant did not move her belongings out until May 4, 2016 the Tenant owes rent for May 2016. The Landlord claims \$850.00.

The Tenant does not dispute the Landlord's claim for \$400.00 for ending the fixed term early and did agree that the Landlord could retain this amount of the security deposit in an email dated June 1, 2016.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, the party claiming costs for the damage must prove, inter alia, that costs for the damage or loss have been incurred or established. As the Landlord received full rental monies for May 2016 I find that the Landlord has not substantiated any loss for May 2016 and I dismiss this claim for compensation. As the Landlord did not incur any costs to replace the mattress and

cover and as no rental reduction was provided for the use of these damaged items by the 3rd party I find that the Landlord has not substantiated any loss and I dismiss the claims for the costs to replace the mattress and cover. Given the Tenant's agreement I find that the Landlord has substantiated an entitlement to the **\$400.00** claimed in compensation for the Tenant leaving the tenancy.

Section 23 of the Act requires that at the start of a tenancy, a landlord and tenant must together inspect the condition of the rental unit and the Landlord must complete a condition inspection report in accordance with the regulations. Section 24(2) of the Act provides that where a landlord does not complete and give the tenant a copy of a condition inspection report, the right to claim against that deposit for damage to the residential property is extinguished. Based on the undisputed evidence that no condition inspection report was conducted with the Tenant when the Tenant moved into the unit on September 8, 2016 I find that the Landlord's right to claim against the security deposit was extinguished at move-in.

Section 38 of the Act provides 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 the security deposit or make an application for dispute resolution claiming against the security deposit. Residential Tenancy Branch Policy Guideline #17 provides that an order for the return of the security deposit may be made on either party's application. Based on the undisputed evidence that the Tenant's forwarding address was provided on June 1, 2016 and considering that the Landlord did not make its application within 15 days receipt of the forwarding address I find that the Landlord must now repay the Tenant double the security deposit plus zero interest of **\$850.00**. It is noted that this determination was not made at the time of the hearing when it was indicated that the Landlord had to return a remaining amount of the security deposit to the Tenant. The Parties were informed early in the hearing that consideration of return of double would occur after considering all the facts of the case and in doing so I note that a larger amount must now be returned than the amount indicated at the hearing.

As the Landlord's application was minimally successful I decline to award recovery of the filing fee. Deducting the Landlord's entitlement of **\$400.00** from the payment to the Tenant of **\$850.00** leaves **\$450.00** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$450.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that 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: January 04, 2017

Residential Tenancy Branch