



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for compensation for loss or damage 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;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- authorization to obtain a return of all or a portion of the security deposit, including double the amount, pursuant to section 38;
- authorization to recover the filing fee for this application from the landlord pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the landlord entitled to a monetary order for compensation for loss or damage pursuant to section 67?

Is the landlord entitled to retain the deposit or is the tenant entitled to a return of all or a portion of the security deposit, including double the amount?

Is either of the parties entitled to recover the filing fee for this application?

Background and Evidence

The tenancy began on June 15, 2015 with a monthly rent of \$1750.00 payable on the 1st day of each month. The tenancy was initially for a fixed term expiring May 31, 2016 but continued on a month to month basis after this date. The monthly rent was increased to \$1800.00 effective June 1, 2016. The tenant paid a security deposit of \$875.00 and a pet deposit of \$875.00 at the start of the tenancy. On July 4, 2016, the landlord returned \$875.00 of this deposit to the tenant.

On June 1, 2016 the tenant provided the landlord with written notice to end the tenancy effective June 30, 2016 and vacated the rental unit on this date.

The landlord is claiming loss of rent for the period of July 1, 2016 to July 15, 2016 in the amount of \$900.00. The landlord submits that he advised the tenant he accepted the notice but the effective date of the end of tenancy would be July 31, 2016 as the tenant did not provide the notice until June 1, 2016. The landlord submits he immediately posted an advertisement to re-rent the unit. The landlord testified that he had 10-11 showings but most of the prospective tenants were multiple tenants and he was looking for only a single tenant. The rental unit was currently occupied by a single occupant. The landlord testified he was successful in re-renting the unit to a suitable tenant effective July 15, 2016 and was not able to secure a new tenant any sooner.

The tenant submits that the landlord did not do his due diligence in re-renting the unit. She claims she provided notice June 1, 2016 which clearly indicated she would be vacating on June 30, 2016. The tenant claims the landlord should have been able to re-rent the unit effective July 1, 2016 as it is in a high density area with high demand.

The tenant is claiming double the security deposit arguing that the landlord failed to return the security deposit within 15 days of the end of the tenancy.

Analysis

Section 38 of the Act provides that when a tenancy ends, the landlord may only keep a security deposit if the tenant has consented in writing, or the landlord has an order for payment which has not been paid. Otherwise, the landlord must return the deposit, with interest if payable, or make a claim in the form of an Application for Dispute Resolution. Those steps must be taken within fifteen days of the end of the tenancy, or the date the tenant provides a forwarding address in writing, whichever is later. A landlord who does not comply with this provision may not make a claim against the deposit and must pay the tenants double the amount of the security deposit, pet deposit, or both, as applicable.

The tenancy ended on June 30, 2016 and the landlord's application was made on July 4, 2016. As the landlord did make an application to retain the deposit within 15 days of the end of the tenancy, the doubling provisions of the Act do not apply.

Pursuant to section 45(1) of the Act, 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 after the landlord receives the notice, and
- (b) is before the day in the month...that rent is payable under the tenancy agreement.

Where a tenant provides for an incorrect effective date on a notice to end tenancy, section 53 of the Act deems it to be changed to the earliest date permitted. In this case, the earliest effective date for the tenant's notice delivered on June 1, 2016 was July 31, 2016. The effective date of the tenant's notice is automatically corrected to July 31, 2016. Once a Notice is given, the tenant is not entitled to unilaterally rescind the notice without the consent of the other party.

As the tenant vacated the rental unit prior to the effective date of her Notice and did not pay rent for the month of July 2016, I find the landlord did suffer a loss of rent for the period claimed. I dismiss the tenant's argument that the landlord could have rented the unit effective July 1, 2016. The evidence supports a finding that the landlord took reasonable steps to mitigate his loss and by doing so he was successful in mitigating a potential loss for the full month of July 2016. I accept the landlord's evidence that the earliest date he was able to re-rent the unit to a suitable tenant was July 15, 2016.

The landlord has established a claim in the amount of \$900.00 for loss of rent.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application from the tenant for a total monetary award of \$1,000.00.

The landlord continues to hold a security deposit of \$875.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act. Therefore, I find that the landlord is entitled to a Monetary Order in the balance of \$125.00.

I dismiss the tenant's claim for return of the security deposit without leave to reapply.

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 this application from the landlord.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of \$125.00. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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 06, 2017

Residential Tenancy Branch