



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for authorization to retain the tenant's security deposit in satisfaction of unpaid and/or loss of rent. The landlord appeared at the hearing but there was no appearance on part of the tenants.

The landlord had named three respondents in filing this application. The landlord explained that two of the named respondents are the same person but the tenant had two different names in her communication with the landlord so the landlord listed both names. The third respondent is the tenant's son. The landlord sent three hearing packages to each of the named respondents via registered mail on July 20, 2016 using a forwarding address the tenant had provided to the landlord in writing by way of a courier service. The two packages addressed to the tenant using her two different names were successfully delivered on August 2, 2016. The third package, addressed to the tenant's son, was returned to sender.

I was satisfied that the tenant was sufficiently served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

As for the naming of the tenant's son as a tenant, I heard from the landlord that she and the tenant had formed a tenancy agreement by way of oral communication and email exchanges but that she did not have any communication with the tenant's son. I informed the landlord that I was unsatisfied that the tenant's son had entered into a tenancy agreement with the landlord and the landlord was agreeable to excluding the tenant's son as a named party to this dispute. Accordingly, the tenant's son was excluded as a named party.

The landlord also requested that her application be amended to withdraw her request to recover the filing fee from the tenant as she had no intention to pursue the tenant for anything in excess of the security deposit. Accordingly, I make no award for recovery of the filing fee with this decision.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid and/or loss of rent from the tenant?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The landlord testified that the tenant had responded to an advertisement for the rental unit and the landlord showed the rental unit to the tenant in June 2016. Following the showing the tenant and landlord had an exchange of emails with respect to forming a tenancy. The tenancy was to commence July 1, 2016 for the monthly rent of \$1,600.00 due on July 1, 2016 and on the first day of every month thereafter. The tenant e-transferred a security deposit in the amount of \$800.00 to the landlord on June 27, 2016, which the landlord accepted. The landlord sent the tenant a tenancy agreement and Form K to sign but the tenant did not return signed copies of these documents to the landlord. The landlord tried following up with the tenant, especially when rent was not forthcoming on July 1, 2016. On July 3, 2016 the tenant left a voicemail message informing the landlord that she would not be proceeding with the tenancy. The landlord returned the call the following day and the parties had a discussion with respect to the landlord commencing efforts to re-rent the unit.

The landlord testified that as of July 7, 2016 she secured a replacement tenant for a tenancy set to commence July 15, 2016. The landlord received \$800.00 from the replacement tenant for the latter half of July 2016. Accordingly, the landlord seeks to recover the unpaid and/or loss of rent of \$800.00 from the tenant by way of the security deposit.

Analysis

Upon consideration of the unopposed evidence presented to me, I provide the following findings and reasons.

Section 1 of the Act defines a tenancy agreement to mean: "an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a licence to occupy a rental unit". Accordingly, even if parties have not executed a written agreement the parties may be found to have entered into a tenancy agreement.

Paying and accepting a security deposit is further evidence that the parties have entered into a tenancy agreement, as sections 19 and 20 of the Act provide the following with respect to security deposits.

19 A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

20 A landlord must not do any of the following:

(a) require a security deposit at any time other than when the landlord and tenant enter into the tenancy agreement

Section 16 of the Act provides that “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 landlord submitted that the parties entered into a tenancy agreement via oral and email exchanges and as further evidence of that is that the tenant paid and the landlord accepted \$800.00 for the security deposit on June 27, 2016. I find I am satisfied the parties formed a tenancy agreement set to start July 1, 2016 in exchange for rent of \$1,600.00 due on July 1, 2016 and the tenant became obligated to fulfill that agreement pursuant to section 16 of the Act by paying rent when due and bringing the tenancy to an end by giving property notice to end tenancy.

I accept that the tenant failed to fulfill the tenancy agreement and did not give adequate notice to end tenancy and the tenant's breach caused the landlord to suffer a loss of rent in the amount of \$800.00. Therefore, I grant the landlord's request to retain the tenant's \$800.00 security deposit in satisfaction of the landlord's losses.

Conclusion

The landlord is authorized to retain the tenant's security deposit in satisfaction of the landlord's unpaid rent.

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 13, 2017

Residential Tenancy Branch