



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, mnsd, ff

Introduction

The tenant applies for the return of the tenant's security deposit and pet damage deposit following the ending of this tenancy, for the costs of moving expenses, for the costs of temporary accommodations, and for recovery of his first month's rent and security deposit at a new residence.

Both parties attended the hearing and provided testimony. The landlord's testimony was provided through the assistance of an interpreter. I accept that all of the tenant's evidence was properly served to the landlord by way of registered mail.

Issue(s) to be Decided

Is the tenant entitled to the return of the security deposit and pet damage deposit?

Is the tenant entitled to recover from the landlord his costs of relocation?

Is the tenant entitled to recover his temporary accommodation costs?

Is the tenant entitled to recover from the landlord the amount of his new security deposit and first month rent at his new residence?

Background and Evidence

On July 4, 2016, the tenant and landlord entered into a written agreement for a fixed term tenancy of one year of a manufactured home located on the landlord's rural property. The tenancy began July 5, 2016, and was to continue for at least one year until July 5, 2017. Rent was \$1,600.00 per month, payable on or before the 5th day of each month. Included in the rent was electricity, water, natural gas, property taxes, garbage collection, laundry, and parking. The tenant paid a security deposit of \$800.00 and a pet damage deposit of \$800.00 at the start of the tenancy, none of which has been returned.

Some issues arose during the tenancy. Garbage was not collected initially, but the landlord resolved this by driving to the premises and removing the tenant's garbage on a weekly basis. The furnace did not work initially, but after complaints by the tenant the fuel tank was filled (on October 12) and the furnace was serviced (October 15). As a result of the tenant's large dog on the premises, the landlord relocated the mailbox to outside the fence.

On November 20, the tenant advised the landlord by text message that an animal larger than a mouse was living under or inside the walls of the house. The tenant advised he could hear noise in his kitchen at night. He found food from his kitchen with bites taken out of it. He advised the landlord this was a health issue, and he would not pay anymore rent until this was resolved. The landlord attended the premises later that same day, but the tenant was not present. The landlord remained there overnight, but the tenant did not return. The landlord booked an appointment for a pest control specialist for November 21, between 4 and 4:30. Prior to that time, the tenant verbally notified the landlord he had moved out. He stayed with a friend for a week, and paid \$250.00 for his accommodation there.

On November 21 and 22, the tenant incurred expenses of a rental of a u-haul truck, fuel charges for the truck, and for a friend to help him move his possessions into storage. He then incurred further moving expenses to move to a new rental home at the end of November. He paid another security deposit and his first month's rent. The tenant now claims all of these expenses from the landlord, alleging he was forced to move because the landlord was unwilling to solve the many problems that had developed.

The landlord responds that all issues were dealt with, and that the tenant moved out before permitting the landlord to address the issue of a rodent at the premises. The landlord disputes he is liable for any of the tenant's relocation costs, and contends the tenant vacated the premises prematurely.

The parties disagree as to other details. The tenant alleges he provided the landlord verbally with a new forwarding address, while the landlord denies receiving a forwarding address in writing or orally. The tenant submits that no walk-through of the home was done at the start of the tenancy, no condition inspection report was ever prepared, and the landlord failed to do a walk-through at the end of the tenancy. The landlord submits that a walk-through was done at the start of the tenancy, but acknowledges that no report was prepared. The landlord contends the tenant refused to do a walk-through at the end of the tenancy.

Analysis

Although the tenancy agreement in this case indicates that it is subject to the Manufactured Home Park Tenancy Act, it is actually the Residential Tenancy Act that applies to this tenancy. Even though the home rented was a manufactured home, it is not situated in a manufactured home park, and this is not a case of pad rent being paid by a tenant who owns his own manufacture home.

The ending of a tenancy in general is governed by section 44 of the Residential Tenancy Act. A fixed term tenancy (such as the one in this case) most often ends only after the fixed term has expired, unless the parties agree in writing to end the tenancy earlier. There is no such written agreement in this case permitting an early ending of the tenancy. It is possible in limited circumstances for a tenant to unilaterally end a fixed term tenancy early, as section 45(3) provides that if a landlord has failed to comply with a material term of the tenancy 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. That provision is not applicable in this case, as the tenant provided no reasonable notice for the landlord to correct the issue with the apparent rodent problem at the premises. Accordingly, in this case the tenancy ended by virtue of the tenant simply moving out and abandoning the premises. Under these circumstances the landlord cannot be held liable for the ending of the tenancy, or for the moving expenses incurred by the tenant as a result of his quick move, as the tenant has not proven a legal basis for the premature ending of the tenancy. That portion of the tenant's claim is dismissed. Similarly, there is no basis for the landlord to pay the tenant's new rent and deposit.

On the other hand, it is clear that pest remediation was required at the premises, and I agree that the tenant had reason to be concerned enough by the pest issue to warrant a stay with a friend for a temporary period, pending the resolution of the pest issue. He had paid rent to the landlord for all of November, but also paid for his accommodation with his friend. I find the landlord to be liable for this accommodation cost, as the landlord had an obligation to provide the rental premises in a healthy condition, free from pests or rodents. I therefore find it appropriate to award the sum of \$250.00 to the tenant, representing the sum he paid his friend for temporary lodging at the end of November.

The tenant seeks return of his security deposit and pet damage deposit. Section 38 of the Residential Tenancy Act governs these issues. Under section 38(1) of the Residential Tenancy Act, a landlord has an obligation to either file a claim to retain the tenant's deposit, or to return a tenant's security deposit, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address, whichever is later. In this case, the tenant has not yet provided his new forwarding address to the landlord in writing as required by section 38(1), and the 15 day period for the landlord to return the deposit has therefore not yet been triggered. Once such proper written notice is provided, the landlord must return the deposits to the tenant, whether or not a claim is filed by the landlord for damage or cleaning to the premises, because the right of the landlord to claim against the deposit in this regard is extinguished by virtue of the landlord's failure to prepare and provide the tenant with a condition inspection report at the start of the tenancy (as governed by sections 24(2) and 38(5)).

Finally, the tenant claims recovery of his filing fee. This is a remedy that is entirely within my discretion, and I award such recovery to the tenant because he has been partially successful with his claim, and because of the delay experienced by the tenant regarding obtaining a working furnace. The sum of \$100.00 is awarded to the tenant.

Conclusion

The landlord must pay the tenant the sum of \$350.00 immediately.
The balance of the tenant's claim is dismissed.

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: February 01, 2017

Residential Tenancy Branch