



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: CNR, MNSD, FF

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of the security deposit and the filing fee. The tenant also applied to cancel a notice to end tenancy for non-payment of rent. Since the tenant has moved out already, this portion of the tenant's application is moot and accordingly dismissed.

The total amount of the tenant's claim is \$2,150.00. During the hearing the tenant amended this amount to \$1,075.00 as he stated that the landlord had returned \$1,075.00 to him.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

The tenancy started on February 01, 2016 for a fixed term ending August 30, 2016. At the end of the term, the tenancy continued on a month to month basis. A tenancy agreement was filed into evidence. The monthly rent was \$2,150.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,075.00 and a pet deposit of \$1,075.00.

On January 13, 2017, the tenant gave the landlord written notice to end the tenancy effective February 15, 2017. The tenant stated that the parties met and in a conversation, the landlord agreed to allow the tenancy to end on February 15, 2017.

The tenant stated that during that meeting, he gave the landlord a rent cheque dated February 01, 2017 in the amount of half a month's rent. The tenant testified that the landlord accepted the rent cheque. The tenant stated that the landlord gave him to understand that the tenancy would end on February 15, 2017 and he would not be required to pay rent for the latter part of February. The tenant stated that this agreement was made verbally and by a hand shake.

The landlord stated that he did agree to allow the tenancy to end on February 15, 2017 and started actively looking for a tenant to replace this tenant. The landlord stated that he did not agree that the tenant was not responsible for rent for the latter half of February 2017, in the event that he did not find a tenant.

On January 22, 2017, the landlord sent the tenant an email reminding him that he was actively looking for a tenant for February 15, 2017 and that the notice to end tenancy dated January 13, 2017 would be effective February 28, 2017. The landlord also notified the tenant that the rent cheque for February covered rent up to February 15, 2017.

On February 01, 2017, the landlord served the tenant with a notice to end tenancy for non-payment of rent in the amount of \$1,075.00. On February 08, 2017, the tenant made this application to dispute the notice and for the return of the deposits. The tenant moved out on February 15, 2017. The tenant agreed that the landlord returned a portion of the deposit and has applied for the return of the balance of the deposit and for the recovery of the filing fee.

Analysis

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case rent is due on the first of each month and by giving notice on January 13, 20017, the earliest the tenant could end the tenancy would be February 28, 2017.

I find that the tenant did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the period of February 15 to February 28, 2017. Accordingly, I find that the landlord is entitled to \$1,075.00, which is the loss that he suffered.

Since the tenant made this application on February 08, 2017, prior to the end of the tenancy, I find that his application was premature. Therefore the landlord was not required to make an application to retain the deposit, within 15 days of the end of tenancy.

The landlord is currently holding \$1,075.00 and I order that the landlord retain the security deposit in full satisfaction of the loss of income that he suffered. The tenant has not proven his case and therefore must bear the cost of filing his application.

Conclusion

The tenant's application is dismissed in its entirety.

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: March 08, 2017

Residential Tenancy Branch