



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR 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:

The landlord requested:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenant requested:

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

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions, to call witnesses and to cross-examine one another

Both parties confirmed receipt of each other’s applications for dispute resolution hearing package (“Applications”) and evidence. In accordance with sections 88 and 89 of the *Act*, I find that both the landlord and tenant were duly served with each other’s Applications and evidence.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for Unpaid Rent and Utilities?

Is the tenant entitled to the return of all or a portion of his security deposit?

Are either of the parties entitled to recover the costs of their filing fees for their applications?

Background and Evidence

This 1 year fixed term tenancy began on May 1, 2015 with monthly rent set at \$1,750.00. The landlord collected a security deposit in the amount of \$875.00. A copy of the tenancy agreement was included in evidence by both parties. The tenant does not dispute the fact that this was a fixed term tenancy which was to end on April 30, 2016.

The tenant had purchased a new home, and gave notice to the landlord that he wanted to end the tenancy a month early. The tenant submitted in his evidence email correspondence between both parties. In his email dated February 18, 2016, the tenant notified the landlord that he had purchased a house, and asked the landlord "if possible, I will be out by the end of March, and it would be great if we could eliminate the April rent"? The landlord replied on February 19, 2016 that she "will try and find a new tenant for April 1st. But if I can't, I'm sure we can work something out".

The tenant testified that he had moved out on March 30, 2016, with the landlord's consent, and that after a satisfactory move out inspection was completed the landlord returned his April 2016 rent cheque to him, but kept the security deposit in lieu of half a month's rent. The tenant testified that he had the consent of the landlord to end the tenancy early without penalty. The tenant provided a forwarding address to the landlord in writing on November 2, 2016 for the return of his security deposit. The tenant testified that the home was in good condition, and that he had never given written authorization to allow the landlord to retain any portion of his security deposit.

The landlord disputes the tenant's testimony that she had consented to the early termination of the fixed term tenancy. The landlord testified that she had tried to re-rent the home by posting ads on two popular housing websites, and was unable to find a suitable tenant for the month of April 2016. The landlord returned the April 2016 rent cheque to the tenant, and kept the security deposit in lieu of half of the April 2016 rent in hopes that she would find a suitable tenant by mid-April 2016. The landlord did not dispute the fact that she kept the tenant's deposit, stating that she retained the deposit as compensation for half of the April 2016 rent. The landlord testified that she suffered a monetary loss as a result of the early move-out, equivalent to one month's rent, despite mitigating the issue by posting the home as soon as possible. The landlord submitted email correspondence from prospective tenants inquiring about the home for rent. The landlord retained the security deposit in satisfaction of half of the April 2016 rent, and is requesting a further \$875.00 for the remaining unpaid rent.

Both parties requested the return of their filing fees.

Analysis

Section 44 of the *Residential Tenancy Act* reads in part as follows:

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:...

(b) *the tenancy agreement is a fixed term tenancy agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;*

(c) the landlord and tenant agree in writing to end the tenancy;...

Section 45(2) deals with a Tenant's notice in the case of a fixed term tenancy:

45 (2) *A tenant may end a fixed term 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 the landlord receives the notice,*

(b) *is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*

(c) *is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

While the tenants did notify the landlord of the early termination of this tenancy, he did not end it in a manner that complies with the *Act*, as stated above. The landlord did not mutually agree to end this tenancy in writing, nor did the tenant obtain an order from the Residential Tenancy Branch for an early termination of this fixed term tenancy. No applications for dispute resolution have been filed by the tenant in regards to this tenancy. The tenant moved out a month earlier than the date specified in the tenancy agreement.

The evidence is clear that the tenant did not comply with the *Act* in ending this fixed term tenancy, and I therefore, find that the tenant vacated the rental unit contrary to Sections 44 and 45 of the *Act*.

I find further that the evidence shows that as a result of the tenant's actions, the landlord suffered a rental loss. The evidence of the landlord is that she was able to re-rent after a month of vacancy. Based on the landlord's efforts I am satisfied that she sufficiently mitigated the tenant's exposure to the landlord's monetary loss of rent for April 2016, as is required by section 7(2) of the *Act*. I therefore allow the landlord's claim for a monetary order for rental differential loss in the sum of \$1,750.00 for the month of lost rental income.

Section 38(1) of the *Act* requires a landlord, within 15 days of the end of the tenancy or the date on which the landlord receives the tenant's forwarding address in writing, to either return the deposit or file an Application for Dispute Resolution seeking an Order allowing the landlord to retain the deposit. If the landlord fails to comply with section 38(1), then the landlord may not make a claim against the deposit, and the landlord must return the tenant's security deposit plus applicable interest and must pay the tenants a monetary award equivalent to the original value of the security deposit (section 38(6) of the *Act*). With respect to the return of the security deposit, the triggering event is the latter of the end of the tenancy or the tenant's provision of the forwarding address. Section 38(4)(a) of the *Act* also allows a landlord to retain an amount from a security or pet damage deposit if "at the end of a tenancy, the tenants agree in writing the landlord may retain the amount to pay a liability or obligation of the tenants."

In this case, I find that the landlord had not returned the tenant's security deposit in full within 15 days of receipt of the tenant's forwarding address in writing, which was on November 2, 2016. There is no record that the landlord applied for dispute resolution to obtain authorization to retain any portion of the tenant's security deposit. The tenant gave sworn testimony that the landlord had not obtained his written authorization at the end of the tenancy to retain any portion of the tenant's security deposit.

In accordance with section 38 of the *Act*, I find that the tenant is therefore entitled to a monetary order amounting to double the original security deposit, also totaling an entitlement to a monetary award of \$1,750.00.

As both parties were equally successful in their applications and obtained the following offsetting monetary awards, no order will be made in regards to the recovery of their filing fees.

Item	Amount
Monetary Award for Landlord's Failure to	\$1,750.00

Comply with s. 38 of the <i>Act</i>	
Monetary Compensation for Landlord's Loss of Rent April 2016	-1,750.00
Monetary Award	0

Conclusion

In this case, both parties are entitled to monetary awards totalling \$1,750.00. Since these amounts are offsetting, I issue no monetary Orders regarding this matter.

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: April 26, 2017

Residential Tenancy Branch