



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, MNR, MND, RR, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Landlord applied on January 26, 2017 for:

1. A Monetary Order for unpaid rent or utilities - Section 67;
2. A Monetary Order for damages to the unit - Section 67;
3. A Monetary Order for compensation - Section 67; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant applied on April 13, 2017 for:

1. An Order for the return of the security deposit - Section 38;
2. A Monetary Order for compensation - Section 67;
3. An Order for a rent reduction - Section 65; and
4. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matters

During the hearing it was determined through the submissions of legal counsel that the Tenants did not receive the same evidence package as was provided to the Residential Tenancy Branch (the “RTB”). A review of the Landlord’s package indicates that the

Tenants did not received any copies of rental listings, the move-in or move-out reports, the photos and a letter from a contractor. As a result I decline to consider these items as evidence to support the Landlord's claims.

Both the Landlord and Tenant purported to increase the monetary amount claimed in the original applications through evidence submissions however neither Party filed an application to amend the original application.

Rule 2.2 of the RTB Rules of Procedure provides that claims are limited to what is stated in the application. As neither party amended their applications to increase the monetary amounts in the original application I find that each Party is restricted to the monetary amount and corresponding claims in their original applications. The Tenant's application sets out a monetary claim amount that is equivalent to the security deposit and I find therefore that the Tenant's application is only in relation to the claim for return of the security deposit and the claims for compensation and a rent reduction are dismissed.

Issue(s) to be Decided

Is the Tenant entitled to return of the security deposit?

Is the Tenant entitled to recovery of the filing fee?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are undisputed facts: The tenancy started on September 15, 2016 for a fixed term to end August 15, 2017. Rent of \$1,795.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$897.50 as a security deposit. The Tenant owes \$1,795.00 for November 2017 rent. The Parties mutually conducted a move-in inspection with a completed report.

The Landlord cannot recall giving the Tenant a copy of the move-in report and the Tenant states that no copy was provided.

The Landlord states that on October 15, 2016 the Tenant informed the Landlord that they wished to end the tenancy as of November 30, 2016. The Landlord confirms that the Landlord accepted a payment of \$500.00 to allow the tenancy to end on that date and confirms the copy of that release from the fixed term tenancy agreement provided as evidence. The Landlord states that the Tenant informed the Landlord by email on November 4, 2016 that the keys were left in the unit. The Landlord states that the Tenants did not pay rent for November 2016 and because of that the Landlord also claims lost rental income for December 2016.

The Landlord states that the Tenant never provided a forwarding address in writing to the Landlord. The Landlord states that the Tenant sent a 3rd party for the move-out inspection however this person refused to sign the move-out report. The Landlord states that they had to search for the Tenant's address. The Tenant's Agent states that the Landlord was provided the forwarding address at move-out. The Agent was not at the move-out inspection. No copy of any written provision of a forwarding address was provided as evidence by the Tenant.

The Landlord states that the Tenant caused a hole in a wall and that while the Tenant had the hole repaired it was not completed by a cover of paint. The Landlord states that the wall had been freshly painted in 2015. The Landlord states that the wall around the hole was pushed in to form a damaged area of about 3 feet by 3 feet and that they paid a contractor \$125.00 to paint the wall. The Tenant states that the hole was about 7 inches by 5 inches and that the Landlord was immediately informed of the damage to the wall when it occurred. The Tenant states that the Landlord referred them to the Landlord's maintenance person who would do the repairs. The Tenant states that they paid this person \$350.00 to make the repairs. The Landlord states that the Tenant was

told to look around for the best price for repairs, that the person referred to the Tenant was only one option and that the Tenant could also have done the repairs themselves.

Analysis

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Although the Tenant's agent gives oral evidence of provision of a forwarding address in writing at the time of the move-out inspection, I note that this is no direct evidence and there is no witness evidence to support that such a forwarding address was provided at that time. Given the Landlord's evidence of no receipt of any forwarding address I find on a balance of probabilities that the Tenant has not substantiated that the Landlord was provided with a forwarding address in writing. As a result I find that the Tenant is not entitled to return of double the security deposit.

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. Given the signed release, I find that the Landlord accepted the early end of the fixed term tenancy for November 30, 2016 and that they are therefore not entitled to lost rental income for December 2016. As the Tenants have agreed that they owe rent for November 2016 I find that the Landlord is only entitled to **\$1795.00** and I dismiss the claim for any other rent or lost rental income.

Given the lack of a photo of the wall damage or any other supporting evidence and considering the Tenant's undisputed evidence of the amount paid for the repair of the hole I find that the Landlord has failed to substantiate that the Tenant left incomplete repairs. I therefore dismiss the claim for damage to the wall.

As the Landlord's application has met with merit I find that the Landlord is entitled to the filing fee of **\$100.00** paid for this application bringing the Landlord's total entitlement to **\$1,895.00**. Deducting the security deposit plus zero interest of **\$897.50** from this amount leaves **\$997.50** owed to the Landlord. As the Tenant's claim for return of the security deposit was not successful I decline to award recovery of the filing fee and in effect the Tenant's application is dismissed in its entirety.

Conclusion

The Tenant's application is dismissed.

I grant the Landlord an order under Section 67 of the Act for **\$997.50**. If necessary, this order may be filed in the Small Claims 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: July 14, 2017

Residential Tenancy Branch