



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REALTY EXECUTIVES ECO-WORLD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties under the Residential Tenancy Act (the “Act”).

The Landlord filed an Application requesting an order of possession; a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; to keep all or part of the security deposit or pet deposit.

The Tenant filed an application to cancel a notice to end tenancy for cause; for a monetary order for money owed or compensation for damage or loss under the Act, Regulation, or tenancy agreement; for the Landlord to comply with the Act, and for the return of the security deposit.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Neither party submitted any documentary evidence in support of their application or in response to the other party’s application. I have reviewed all oral evidence before me; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The Parties testified that the Tenant moved out of the rental unit on May 31, 2017, prior to the date each party applied for Dispute Resolution. The Tenant's request to cancel a notice to end tenancy and the Landlord's request for an order of possession for the rental unit is not required and are dismissed.

Issues to be Decided

- Is the Landlord entitled to a monetary order for unpaid rent?
- Is the Landlord entitled to keep the security deposit in partial satisfaction of the claim for unpaid rent?
- Is the Tenant entitled to the return of double the security deposit?

Background and Evidence

The Parties testified that the tenancy began in November 2016, as a one year fixed term tenancy. Rent in the amount of \$1,600.00 plus \$200.00 for utilities was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$800.00. The tenant paid the Landlord an additional rent deposit of \$1,800.00. There was no liquidated damages clause in the tenancy agreement that identified a fee must be paid if the tenancy was ended early.

Tenants Claims

The Tenant testified that he prepaid the last months' rent of \$1,800.00 to the Landlord at the start of the tenancy. He testified that on April 26, 2017, he sent the Landlord a written notice to end the tenancy using email. He testified that the Landlord's agent told him he could move out at the end of May 2017.

The Tenant testified that he provided his forwarding address to the Landlord's agent on June 13, 2017.

The Tenant testified that there was no agreement reached that the Landlord could retain any amount of the security deposit.

The Tenant testified that the Landlord's agent agreed to return the rent deposit of \$1,800.00 to him, but the agent failed to do so.

The Tenant is seeking the return of the \$1,800.00 rent deposit and the \$800.00 security deposit.

Landlord's Claims

The Landlord is seeking compensation in the amount of \$2,600.00. The Landlord testified that the Tenant broke the fixed term lease and the Landlord suffered a loss of rent for one month. The Landlord is seeking to keep the security deposit of \$800.00 in compensation because the Tenant broke the lease.

The Landlord amended his claim for rent to be the amount of \$1,600.00, since there is no claim for utilities for the month he suffered a loss of rent.

The Landlord testified that he received the Tenant's notice to end the tenancy but there was no agreement from the Landlord that the fixed term tenancy contract was void.

The Landlord testified that he never returned the security deposit to the Tenant and that he never received the Tenant's forwarding address on June 13, 2017. On June 27, 2017, the Landlord applied for dispute resolution requesting to keep the deposit, which is within 15 days of the date the Tenant alleges he provided the forwarding address.

Analysis

The Residential Tenancy Branch Policy Guideline #30 Fixed Term Tenancies states that during the fixed term neither the Landlord nor the Tenant may end the tenancy except for cause or by agreement of both parties.

The Residential Tenancy Branch Policy Guideline #3 Claims For Rent and Damages For Loss of Rent states that damages awarded are an amount sufficient to put the Landlord in the same position as if the Tenant had not breached the agreement. As a general rule this includes compensating the Landlord for any loss of rent up to the earliest time that the Tenant could legally have ended the tenancy.

Based on the testimony of the parties, and on a balance of probabilities, I find as follows:

I find that the parties entered into a fixed term tenancy agreement. The Tenant ended the tenancy early by moving out of the rental unit. There is insufficient evidence from the Tenant to prove that the Landlord agreed to end the fixed term tenancy agreement. Therefore, the Tenant is therefore responsible for any loss of rent suffered by the Landlord. The Landlords claim that he suffered a loss of one month's rent rent was unopposed by the Tenant.

I accept the Landlord's testimony that he was not able to rent the unit out for the month after the Tenant vacated. I find that the Tenant is responsible to pay the Landlord the amount of \$1,600.00 for a loss of rent.

With respect to the security deposit, I find that there is insufficient evidence from the Tenant that he provided his forwarding address to the Landlord on June 13, 2017. I find that the doubling provision of the security deposit pursuant to section 38 of the Act does not apply to the Tenant's claim.

I dismiss the claim of the Landlord to keep the security deposit of \$800.00. I find that the tenancy agreement did not contain a liquidated damages clause and the Landlord has no basis for his claim to keep the \$800.00 as a penalty for the Tenant breaking the lease.

I order the Landlord to return the security deposit of \$800.00 to the Tenant.

Monetary Awards

I find that the Landlord is holding \$1,800.00 of a rent deposit and \$800.00 of a security deposit.

The Landlord established a claim of \$1,600.00 due to a loss of rent when the Tenant ended the tenancy early.

I authorize the Landlord to keep \$1,600.00 from the rent deposit in full satisfaction of the Landlord's claim. The Landlord must return the remaining \$200.00 to the Tenant.

I also find that the Landlord owes the Tenant the amount of 800.00 for the return of the security deposit.

I grant the Tenant a monetary order in the amount of \$1,000.00. The monetary order must be served on the Landlord and may be enforced in the Provincial Court.

As to the recovery of the filing fees that the parties paid for the Applications for dispute resolution, I find both parties were equally successful with their applications, and therefore I do not award compensation for their filing fees.

Conclusion

The Tenant ended a fixed term tenancy early and the Landlord is awarded compensation for a loss of rent. The Tenant was successful for the return of the security deposit.

I grant the Tenant a monetary order in the amount of \$1,000.00. The monetary order must be served on the Landlord and may be enforced in the Provincial 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: September 15, 2017

Residential Tenancy Branch