



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FF, MNR, MND, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$850 for loss or rent
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

The Application for Dispute Resolution filed by the Tenant makes the following claims:

- a. A monetary order in the sum of \$1700 for double the security deposit
- b. An order to recover the cost of the filing fee.

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I find that the Application for Dispute Resolution/Notice of Hearing filed by the landlord was sufficiently served on the Tenants by mailing by registered mail to where the Tenants reside. I find that the Application for Dispute Resolution filed by the filed by the Tenants was sufficiently served on the Landlord by mailing by registered mail to where the landlord resides on November 22, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?
- d. Whether the Tenants are entitled to a monetary order and if so how much?
- e. Whether the Tenants are entitled to recover the cost of the filing fee?

Background and Evidence:

The parties entered into a one year written tenancy agreement that provided that the tenancy would start on May 1, 2017 and end on April 30, 2018. The tenancy agreement provided that the tenant(s) would pay

rent of \$1700 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$850 at the start of the tenancy.

The tenants never moved although they paid the rent for May and June 2017. Around the end of May they were informed that they had been accepted to join a co-op. They advised the landlord orally on May 31, 2017 that they would not be moving in and they gave the landlord written notice they would not be moving on June 10, 2017. The keys were returned to the landlord on June 10, 2017. The Tenants asked the landlord that if he was able to re-rent the premises for part of June would the landlord reimburse the proportionate portion of the rent.

On two occasions the landlord advised the Tenant in writing he would return the security deposit.

The tenants submit the landlord has failed to mitigate his loss based on the following:

- The landlord originally advertised the rental unit for \$1900 per month (\$200 more than what was rented to the Tenants). The original posting by the landlord was on June 4, 2017. The landlord did not reduce the price on Craigslist until June 16, 2017.
- The Tenant offered to help the landlord re-rent the rental unit including advertising on a work job site. The landlord failed to give them the information.
- The landlord only had one showing.

The landlord gave the following evidence:

- He was not able to re-rent the rental unit for the month of June. Eventually he found a new tenant who took possession on July 15, 2017 paying the rent of \$1700 per month.
- He increased the rent demanded to \$1900 because he had made some renovations.
- The tenants are responsible to pay the rent for the unexpired portion of the fixed term.

Landlord's Application - Analysis

The basic principle is that tenants are responsible to pay the rent for the entire fixed term subject to the landlord's statutory obligation to mitigate their loss.

Section 7(2) of the Act provides as follows:

"Liability for not complying with this Act or a tenancy agreement

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss."

Policy Guideline #3 includes the following

"In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by rerenting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale."

After carefully considering all of the evidence I determined the landlord failed to sufficiently mitigate his loss for the following reasons:

- The landlord failed to provide the tenancy agreement with the new Tenant which could confirm when the new tenant entered into the new agreement and when he took possession.
- The landlord failed to provide sufficient evidence as to his efforts to re-rent the rental unit.
- The landlord failed to take advantage of the tenants offer to assist in the re-renting of the rental unit.
- The landlord was asking for a \$200 higher rent for a more than 2 weeks after the tenants gave the landlord notice they would not be moving in.
- The landlord misled the tenants on at least two occasions informing them he would be returning the security deposit.

As a result I ordered that the landlord's application be dismissed without leave to re-apply.

Tenants Application:

The Residential Tenancy Act provides that a landlord must return the security deposit plus interest to the tenants within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenants forwarding address in writing unless the parties have agreed in writing that the landlord can retain the security deposit, the landlord already has a monetary order against the tenants or the landlord files an Application for Dispute Resolution within that 15 day period. It further provides that if the landlord fails to do this the tenant is entitled to an order for double the security deposit.

The tenancy ended on June 10, 2017 after the tenants returned the keys to the landlord and gave the landlord written notice they would not be moving in. The landlord filed an Application for Dispute Resolution within 15 days of the end of the tenancy. I determined the tenants are not entitled to a doubling of the security deposit as the landlord filed with 15 days of the end of tenancy.. I do not accept the submission of the tenants that the landlord's claim should be dismissed because the security deposit can only be used to be applied against damage to the rental unit.

However, I determined the Tenants are entitled to an Order for the return of the security deposit as the landlord's claim has been dismissed.

Monetary Order and Cost of Filing fee

I ordered the landlord(s) to pay to the tenant the sum of \$850 plus the sum of \$100 in respect of the filing fee for a total of \$950.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

Conclusion

In summary I dismissed the landlord's claim. I ordered the Landlord to pay to the Tenants the sum of \$950.

This decision is final and binding on the parties.

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: December 14, 2017

Residential Tenancy Branch