



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 an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

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

Preliminary Matter

At the onset of the hearing it was noted that there was no evidence package from the Landlord. The Landlord states that it provided an evidence package of between 10 to 15 pages to both the Residential Tenancy Branch (the “RTB”) and the Tenant by registered mail. The Tenant states that it only received a copy of the notice of hearing and the application for dispute resolution. The Landlord states that he does not recall the date its evidence was mailed and does not have the registered mail tracking numbers. The Landlord does not wish to adjourn the matter in order to provide its documentary evidence and is prepared to rely solely on oral evidence.

Rules 2.5 and 3.1 of the RTB Rules of Procedure provides that evidence that a party wishes to rely on for the hearing must be provided to both the other party and the RTB in advance of the hearing. Based on the Tenant’s evidence that no evidence package was received and given the lack of registered mail evidence I find that the Landlord did

not provide an evidence package to the Tenant. The Landlord therefore may only rely on its oral evidence to support its claims.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent or lost rental income?

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The Parties agree as follows: The Parties signed a written tenancy agreement indicating that the tenancy started on March 6, 2017. The tenancy agreement indicates that rent of \$1,500.00 was payable on the 6th day of each month. At the outset of the tenancy the Landlord collected \$750.00 as a security deposit and \$100.00 as a pet deposit. The Parties mutually conducted both a move-in and move-out condition inspection with a completed report copied to the Tenants.

The Landlord states that the addendum to the tenancy provides that the Tenant was required to pay rent biweekly and that the tenancy could not end before April 6, 2017 or after June 14, 2017. The Landlord states that it was the intention that the tenancy could end anywhere between these dates. The Landlord states that the addendum provides that after April 6, 2017 the Parties could renew the tenancy for two week periods at a time. The Landlord states that the Tenant was required to provide a two week advance notice to end the tenancy. The Landlord also states that the Tenant was required under the Act to provide a month's notice to end the tenancy. The Landlord states that on May 18, 2017 the Tenant paid the \$750.00 rent for the two week period May 18 to June 1, 2017 and also gave notice to end the tenancy for June 1, 2017. The Landlord states that the Tenant was told he failed to provide sufficient notice to end the tenancy. The Landlord states that the Tenant then agreed by email to extend the move out date to June 15, 2017. The Landlord states that the Tenant did not move out until June 5, 2017. The Landlord claims unpaid rent for the period June 1 to 15, 2017 inclusive of

\$750.00. The Landlord states that the unit was advertised online sometime before June 1, 2017 for \$250.00 per night.

The Tenant states that he understood that the addendum allowed a two week notice to move out of the unit. The Tenant states that he did not agree to a move-out date of June 15, 2017 and that the Tenants moved out of the unit on June 3, 2017. The Tenant states that the Landlord was not available to return the keys so they were not returned until the move-out inspection of June 5, 2017. The Tenant states that he does not owe any rental monies to the Landlord.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. I found the Landlord's oral evidence of the terms of the addendum on rent payable, rental periods and required notice to end the tenancy to be confusing, convoluted and in conflict with the tenancy agreement. I therefore accept the Tenant's evidence that the addendum allowed a two week notice period to end the tenancy and that the Tenant provided that notice. Even if the Tenant did breach the tenancy agreement or the Act by providing insufficient notice to end the tenancy given the Landlord's evidence that the unit was advertised for a significantly greater amount of rental income than was being obtained from the Tenant, I find that the Landlord failed to take any reasonable steps to reduce the rental income claimed. For these reasons I find on a balance of probabilities that the Landlord has not substantiated that the Tenant failed to pay rent or caused any loss of rental income and I dismiss the claim for unpaid rent or for lost rental income. As the Landlord's claim has had no merit I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety. As the Landlord has no valid claim against the security and pet

deposit I order the Landlord to return the **\$850.00** plus zero interest to the Tenant forthwith.

Conclusion

The Landlord's application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$850.00**. 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: December 1, 2017

Residential Tenancy Branch