



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

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to retain the amount collected as a security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on August 1, 2016 for a one year term. The end date of the term was not included in the written tenancy agreement. The tenancy ended on July 31, 2017. During the tenancy rent of \$850.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$850.00 as a security deposit.

The Landlord states that the Tenants failed to pay rent for July 2017 and claims \$850.00.

The Tenant states that the Landlord informed them by email in June 2017 that the Landlord was not going to renew the tenancy, that the Landlord intended to move into the unit and that the Tenants would be evicted for July 31, 2017. The Tenant states that they informed the Landlord by email in June 2017 that the Landlord was required to end the tenancy according to the Act by giving the Tenants notice on a proper form. The Tenant states that the Landlord did not respond and the Tenants decided that since they did not want to get into a dispute with the Landlord they would move out of the unit. The Tenant argues that since there was no requirement for the Tenants to move out of the unit at the end of the term and as the Landlord was required to end the tenancy by giving the Tenants a notice to end the tenancy for landlord's use with one month's compensation the Tenants did not have to pay the last month's rent. The Landlord confirms that it ended the tenancy by email setting out that they were not going to enter into another tenancy agreement at the end of the term.

Analysis

Section 51(1) of the Act provides that a tenant who receives a notice to end a tenancy for landlord's use of property is entitled to receive from the landlord on or before the effective date of the landlord's notice an amount that is the equivalent of one month's rent payable under the tenancy agreement. As there is no evidence that the Landlord gave the Tenants a notice to end the tenancy for landlord's use and considering the Tenants' evidence that they moved out of the unit despite knowing that the tenancy could not end by the Landlord's email, I find that the Tenants moved out of the unit of their own accord and that the Landlord was not obliged to pay the Tenants any compensation nor were the Tenants entitled to deduct any rents payable.

Section 26(1) of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations

or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent. As there was no right under the Act for the Tenants to deduct the rent for July 2016 and as this amount was not paid, I find that the Landlord has substantiated its claim for unpaid rent of **\$850.00**.

Section 19(1) of the Act provides that a landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of 1/2 of one month's rent payable under the tenancy agreement. Based on the undisputed evidence of the amount of security deposit collected by the Landlord I find that the Landlord breached the Act in collecting more than allowed under the Act. However as the Landlord is entitled to an amount that is over the allowable amount to be collected as a security deposit I decline to return the overpaid amount to the Tenants. As the Landlord breached the Act in collected more than allowed I decline to award the Landlord with recovery of the filing fee. Deducting the amount of **\$850.00** plus zero interest against the Landlord's entitlement of **\$850.00** leaves nothing owed to the Landlord.

Conclusion

I order the Landlord to retain the security deposit plus zero interest of \$850.00 in full satisfaction of the claim.

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: February 08, 2018

Residential Tenancy Branch