



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on July 24, 2018. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

The Landlord and the Tenant both attended the hearing and provided testimony. Both parties confirmed receipt of each other's documentary evidence. The Tenant did not submit any documentary evidence. However, the Tenant confirmed that she received the Landlord's application package and evidence on December 7, 2017.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset what is owed to her?

Background and Evidence

Both parties agree that the Tenant paid a security deposit in the amount of \$280.00 and that monthly rent was \$550.00, and was due by the first of the month. The parties agree that the Tenant moved in a day early, on May 31, 2017. The parties agree that after the Tenant spent one night in the rental unit, she returned the keys, moved out, and sent a text message to the Landlord on June 1, 2017. The parties agree that there was no written tenancy agreement signed at the time the Tenant moved out. The Tenant paid June rent, despite moving out on June 1, 2017.

The Landlord stated that since the Tenant left without giving proper written notice, she should be able to keep the security deposit because the rental unit was empty from June 1, 2017, until September 1, 2017. The Landlord stated that she showed the rental unit to a couple of people over the summer, but she was unable to re-rent it for 3 months. The Landlord stated that she often rents to students, and the summer is a slow period for the rental of this suite. The Landlord indicated it is not uncommon for the suite to be empty during the summer months because it is often used as student accommodation.

The Landlord stated that she got the Tenants forwarding address in writing on November 25, 2017, and subsequently filed to retain the deposit on December 7, 2017.

The Tenant stated that she does not feel she should have to forfeit her security deposit. The Tenant stated that she only lived in the rental unit for one night, and left because she found out she did not have her own separate heat control for her room.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I note the Tenant moved in on May 31, 2017, and I note that no written tenancy agreement was signed. Although the Landlord planned to present the Tenant with the agreement after she moved in, I note the Tenant moved out before this could happen. I find the tenancy agreement in place was oral in nature and was month to month, since no written agreement had been reached at that time. The Tenant moved out after living in the rental unit for one night, and left without giving proper notice that she would be leaving.

The Landlord is seeking to retain the Tenant's \$280.00 security deposit to compensate her for the lost rent for the period from June 1, 2017 until September 1, 2017, the period of time that the unit was vacant.

I turn to section 45 of the Act:

Tenant's notice

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the Tenant breached section 45 of the Act by failing to give at least one month written notice to the Landlord when she vacated on June 1, 2017. The parties agree that monthly rent was due on the first of the month. I find that when the Tenant vacated the rental unit on June 1, 2017, sent a text message to the Landlord informing her of such and returned the keys, that this served as her formal notice that she would end the tenancy. However, pursuant to section 45 of the Act, the earliest date the Tenant could legally end the tenancy in this situation was July 30, 2017, which is the day before rent is due, and the date which is at least one month after notice has been given by the Tenant. As such, I find the Landlord is entitled to some compensation for the period of time up until the Tenant was legally allowed to end the tenancy (July 31, 2017).

The Landlord is requesting to keep the security deposit of \$280.00 to compensate her for the unit being empty from June-August 2017. However, I find the Tenant is not responsible for rent for the period of August, as there was no fixed term lease in place. I note the Landlord has already been paid by the Tenant for the month of June 2017. However, since the Tenant gave improper and short notice that she would be leaving, I

find the Landlord is entitled to the full amount of her claim, which is to keep the security deposit of \$280.00 to compensate her for July 2017. I authorize the Landlord to keep the security deposit in the amount of \$280.00

Since the Landlord was successful in this application, I also award her the recovery of the filing fee (\$100.00), pursuant to section 72 of the Act. I will issue a monetary order for this amount.

I find this decision settles all outstanding rent and security deposit matters between the parties for this two day tenancy.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$100.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be 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 25, 2018

Residential Tenancy Branch