



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DOMUS MGMT
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, 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 to recover unpaid rent and /or utilities; to keep the security deposit; and to recover the cost of the filing fee.

The Tenant filed an Application for the return of the security deposit and to recover the cost of the filing fee.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. Both parties 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.

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.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?
- Is the Tenant entitled to the return of the security deposit?

Background and Evidence

On January 2, 2018, The Tenant completed an application for tenancy, for a tenancy to start on January 13, 2018. The Tenant paid the Landlord a security deposit in the amount of \$625.00.

The Tenant testified that she changed her mind and did not want to proceed with the tenancy application.

The parties provided a copy of an email from the Landlord to the Tenant dated January 3, 2018 at 9:28 am that states the Tenant is approved to move into the rental unit on January 15, 2018. The Landlord states that the Tenant's security deposit cheque will be deposited and asks the Tenant to let her know when she can come back to sign the rental agreement. The Tenant replied to the Landlord's email at 2:17 pm the same day by stating that she works until 6 pm so after that or on the weekend.

The parties provided a copy of a letter the Tenant sent to the Landlord dated January 4, 2018. The Tenant writes that she would like to cancel her application for tenancy. The Tenant provided her forwarding address for the return of the security deposit.

On January 15, 2018, The Landlord applied for dispute resolution making a claim for unpaid rent and to keep the security deposit.

The Landlord testified that there was a tenancy in place and the Tenant changed her mind about the tenancy after the tenancy was accepted and the deposit was made.

In response, the Tenant submitted that she changed her mind and it is unfair for the Landlord to claim against her deposit for unpaid rent. The Tenant wants the Landlord to return the security deposit of \$625.00.

The Tenant submitted that she never signed a tenancy agreement and the Landlord asked for the security deposit prior to accepting her as a Tenant. The Tenant submitted that application fees are not permitted under the Act.

The Landlord testified that he told the Tenant about the fine print on the application. The application provides: if the offer is accepted, the applicant will pay a security deposit to the Landlord.

The Landlord is seeking compensation for a loss of half a month's rent for January 2018, and is seeking to keep the security deposit of \$625.00.

The Landlord withdrew his claim for additional compensation.

Analysis

Section 16 of the Act provides that the rights and obligations of a Landlord and Tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the Tenant ever occupies the rental unit.

Section 12 of the Act provides that the standard terms are terms of every tenancy agreement whether or not the tenancy agreement is in writing.

The Residential Tenancy Branch Policy Guideline #3 Claims For Rent and Damages for Loss of Rent states:

The 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. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows:

Loss of Rent

I find that the parties entered into an oral tenancy agreement on January 3, 2018. The Landlord informed the Tenant that she was approved and that her deposit will be processed. The Tenant replied to the Landlord's email later that day and indicated her acceptance. I find that the Tenant accepted the offer at 2:17 pm on January 3, 2018.

I find that the rights and obligations of a Landlord and Tenant began on January 3, 2018. The Tenant was required to provide the Landlord with proper written notice if she wanted to end the tenancy. The Tenant breached the Act and is responsible to pay the rent for January 2018.

I find that the Landlord mitigated the loss of rent by re-renting the unit to a new tenant for February 2018. The Landlord testified that he was unable to rent the unit out for the period of January 13, 2018, to January 31, 2018.

In the circumstances, I find it reasonable to grant the Landlord compensation for a loss of rent for half of January 2018. I grant the Landlord compensation in the amount of \$625.00.

I authorize the Landlord to keep the security deposit of \$625.00 in satisfaction of his claim.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was successful with his application. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

After applying the \$625.00 security deposit towards the Landlord's award of \$725.00, I grant the Landlord a monetary order for the balance of \$100.00. This order must be served on the Tenant and may be enforced in Provincial Court.

I find that the Landlord did not accept an application fee from the Tenant. I find that the Landlord did not process the security deposit until the date the tenancy was accepted by the Tenant.

Conclusion

The Tenant failed to end the tenancy in accordance with the Act and is responsible for the Landlord's loss of rent.

I find that the Tenant owes the Landlord \$625.00 for the loss of a half months rent. The Landlord is authorized to keep the security deposit of \$625.00.

The Landlord is granted a monetary order in the amount of \$100.00 for the cost of the filing fee.

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: August 20, 2018

Residential Tenancy Branch