



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

Tenant: MNDC MNSD FF
Landlord: MNR MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on February 25, 2019. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenant both attended the hearing. Both parties confirmed receipt of each other’s application package, and evidence.

All parties provided affirmed testimony and 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 submitted in accordance with the rules of procedure, and evidence that is relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Tenant

- Is the Tenant entitled to compensation for money owed or damage or loss under the Act?
- Is the Tenant entitled to the return of double the security deposit held by the Landlord?

Landlords

- Are the Landlords entitled to compensation for unpaid rent?

Background and Evidence

Both parties agreed that monthly rent was set at \$1,800.00 per month, and was due on the first of the month. Both parties also agreed that the Landlord still holds a security deposit of \$900.00 and a pet deposit of \$900.00. The parties agree that the Tenant moved out of the rental unit on September 30, 2018, after many back and forth discussions about the sale of the house and potential rent increases.

Landlord's Application

The Landlord stated that he sold the house, effective October 1, 2018, and he was never paid rent for September 2018. The Tenant stated he did not pay rent for this month because he felt he was entitled to this month free, because he was asked to leave by the new owner. The Landlord is looking to recover \$1,800.00 in rent for this month.

Tenant's application

The Tenant stated that he is seeking 12 month's compensation because he was asked to move out by the purchasers of the house and the new owner never moved in, as was originally indicated. The Tenant stated that the Landlord (purchaser) initially offered to let him stay by increasing his rent, but that he did not feel this was right, so he decided to leave. The Tenant stated that he did not want to continue renting from someone who was willing to increase the rent unlawfully. The Tenant stated that he never received a formal written 2-Month Notice to End Tenancy from the Landlord. The Landlord confirmed that he never issued a 2-Month Notice, and the Tenant chose to leave after not being happy with his options.

The Tenant is also seeking double the security deposit back because the Landlord never returned either of his deposits. The Landlord acknowledged getting the Tenant's forwarding address in writing on October 4, 2018. The Landlord filed his application on October 19, 2018, seeking to keep the deposit to offset rent he was owed.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

First, I turn to the issue of the security deposit and pet deposit. Section 38(1) of the *Act* requires a landlord to repay the security deposit or make an application for dispute resolution within 15 days after receipt of a tenant's forwarding address in writing or the end of the tenancy, whichever is later. When a landlord fails to do one of these two things, section 38(6) of the *Act* confirms the tenant is entitled to the return of double the security deposit.

In this case, I find the tenancy ended on September 30, 2018, and the Landlord received the Tenant's forwarding address on October 4, 2018. Accordingly, the Landlord had until October 19, 2018 to either file an application against the deposits, or return them. In this case, the Landlord filed an application against the deposits within the acceptable timeframe, and the Tenant is not entitled to double the security deposit. My findings on the remaining deposit, still held by the Landlord will continue below.

With respect to the Tenant's application for 12 month's compensation, pursuant to section 51 of the *Act*, I note that there was no formal written notice issued by the Landlord. Section 51 of the *Act* (and any related compensation) requires that a 2-Month Notice to End Tenancy be issued by the Landlord. In this case, I note the previous Landlord sold the house, and the Tenant left due to fallout from this transaction and after unsuccessful conversations about his continued tenancy.

I acknowledge the Tenant was not happy with the conversations about a potential rent increase. However, I find it important to note that since no formal 2-Month Notice was issued, the Tenant was not required to move out. The Tenant could have made an application for dispute prior to moving out, should he have had any issues he needed addressing, or if he needed clarity regarding whether he was required to move out. I find the Tenant is not entitled to 12 month's compensation for the reasons stated above.

Next, I turn to the Landlords' application for unpaid rent for September 2018. I find the consistent evidence is that the Tenant did not pay rent for September 2018. I note that section 51 of the *Act* provides the Tenant with an amount that is equivalent to 1 month's rent as follows:

51 (1) A tenant who receives a notice to end a tenancy under section 49 [*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.

However, as stated above, the Landlord never issued a formal written "notice" and therefore no compensation is due (free last month rent). Since no Notice to End Tenancy was issued by the Landlord, the Tenant is still responsible for paying September 2018 rent, since he was still living in the unit. I find the Tenant owes \$1,800.00 for this month.

Since the Tenant was not successful with his application, I decline to award him the cost of the filing fee. However, as the Landlord's application was successful, I grant him, pursuant to section 72 of the *Act*, the recovery of the cost of the filing fee in the amount of \$100.00.

Further, pursuant to section 72 of the Act, **I authorize** the Landlord to retain the full amount of the security and pet deposits, totaling \$1,800.00, in order to offset the rent he is owed (\$1,800.00), which leaves an amount of \$100.00 still owed by the Tenant for the cost of the filing fee which the Landlord paid. I award the landlord a monetary order in the amount of \$100.00, plus he is authorized to retain the security and pet deposits he currently holds, as specified above.

Conclusion

The Tenant's application is dismissed, in full, without leave to reapply.

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: February 26, 2019

Residential Tenancy Branch