



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR MNSD FF
Tenant: MNSD FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution filed by the parties. The participatory hearing was held, via teleconference, on April 9, 2019. Both parties applied for multiple remedies under the *Residential Tenancy Act* (the “Act”).

The Landlord and the Tenant both attended the hearing. The Landlord acknowledged receipt of the Tenant’s application package and evidence. The Tenant acknowledged receipt of the Landlord’s application package and evidence.

All parties provided 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 the return of double the security deposit held by the Landlord?

Landlord

- Is the Landlord entitled to a monetary order for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenant?

Background and Evidence

Both parties agree that:

- monthly rent was \$1,596.35 and was due on the first of the month.
- The tenant moved in on May 15, 2004, and moved out on November 30, 2018
- The Landlord still holds a security deposit in the amount of \$625.00
- The Tenant provided, and the Landlord received, the Tenant's forwarding address in writing on October 15, 2018.

The Landlord is seeking to recover unpaid rent for September 2018. The Tenant acknowledged that she did not pay rent for September and indicated she did this because she was unhappy with how long it was taking for the Landlord to complete the renovations and remediate the flood in her unit. The Tenant stated that the flood happened in July of 2018, and it took a couple of months for all work to be completed. The Tenant stated that she continued to reside in the rental unit for the whole time, except from September 10-14, 2018, which is when some flooring needed to be replaced. The Tenant was unhappy with the expense and inconvenience caused by the flood, which is why she withheld rent for September. The Landlord stated the Tenant should have taken out renters insurance, and it is not his fault she did not carry insurance.

Analysis

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

First I turn to the Landlord's claim for monetary compensation. Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent.

Based on the evidence and testimony from both parties, I find the Tenant did not pay rent for September 2018. I note she was unhappy with the pace of the renovations, and the inconvenience/expense of it all. However, I find there is insufficient evidence that she had a legal right to withhold rent, under the Act. During the hearing it was explained to the Tenant that she did not properly apply for monetary compensation as part of this application. I informed her that if she wanted to be compensated for issues surrounding the flood, then she would have to file an application for this matter separately. I find the Tenant still owes September 2018 rent in the amount of \$1,596.35.

Next, I turn to the Tenant's application to have the security deposit (double) returned to her. 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, the Tenant moved out of the rental unit on November 30, 2018, which I find reflects the end of the tenancy. The Landlord received the Tenant's forwarding address in writing on October 15, 2018. The latter of these two dates is November 30, 2018.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from November 30, 2018 to either repay the security deposit (in full) to the Tenant or make a claim against it by filing an application for dispute resolution. The Landlord filed an application against the deposit on December 13, 2018, which is within the allowable timeframe. As such, the Tenant is not entitled to double to security deposit.

Further, section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As 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. I decline to award the Tenant with recovery of the filing fee as she was not successful with her application.

Also, pursuant to sections 72 of the *Act*, I authorize that the security deposit, currently held by the Landlord, be kept and used to offset the amount owed by the Tenant. The Tenant's security deposit has accumulated some interest, as follows:

2004 \$625.00: \$0.00 interest owing (0% rate for 63.67% of year)
 2005 \$625.00: \$0.00 interest owing (0% rate for 100.00% of year)
 2006 \$625.00: \$3.13 interest owing (0.5% rate for 100.00% of year)
 2007 \$626.13: \$9.44 interest owing (1.5% rate for 100.00% of year)
 2008 \$631.53: \$9.56 interest owing (1.5% rate for 100.00% of year)
 2009 \$641.01: \$0.00 interest owing (0% rate for 100.00% of year)
 2010 \$647.14: \$0.00 interest owing (0% rate for 100.00% of year)
 2011 \$647.14: \$0.00 interest owing (0% rate for 100.00% of year)
 2012 \$647.14: \$0.00 interest owing (0% rate for 100.00% of year)
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 2019 \$647.14: \$0.00 interest owing (0% rate for 27.12% of year)

I find the interest accumulated amounts to \$22.13, bringing the total amount of her security deposit to \$647.14.

In summary, I grant the Landlord a monetary order based on the following:

Claim	Amount
Unpaid Rent	\$1,596.35
Filing fee	\$100.00
Less: Security and pet Deposit currently held by Landlord	(\$647.14)
TOTAL:	\$1,049.21

Conclusion

The Landlord is granted a monetary order in the amount of **\$1,049.21**, as specified above. 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: April 10, 2019

Residential Tenancy Branch