



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ALLISON APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR-S, FF, MNDC, MNSD

Introduction

This hearing dealt with applications from both the landlord and the tenants under the *Residential Tenancy Act* (the *Act*). The landlord applied for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover its filing fee for this application from the tenant pursuant to section 72.

The tenant applied for:

- a monetary order for compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to obtain a return of all or a portion of her security deposit pursuant to section 38.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord's agent (the landlord) served the tenant with the notice of hearing package via Canada Post Registered Mail. The tenant confirmed receipt of the package as claimed. The landlord stated that the tenant was served with the submitted documentary evidence via Canada Post Registered Mail on May 24, 2019. The tenant confirmed receipt as claimed. The tenant stated that the landlord was served with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail on May 27, 2019. The landlord confirmed receipt as claimed. Neither party raised any service issues. I accept the undisputed testimony of both parties and find that both parties have been sufficiently served as per section 90 of the *Act*.

Preliminary Issue(s)

At the outset, the applications of both parties were clarified. Both parties clarified that the actual named landlord, A.A. is in fact the landlord as per the signed tenancy agreement. Both parties agreed to allow me in amending the tenant's application naming the landlord as A.A. instead of that listed as T.R.

The landlord seeks a monetary claim of \$1,175.00 for the loss of rent, unpaid utilities and cleaning charges as well as recovery of the filing fee. Discussions throughout the hearing resulted in the landlord cancelling the requests for unpaid utilities and cleaning charges. The tenant's monetary claim was amended and lowered from \$1,600.00 to \$1,175.00. During the hearing the tenant amended the monetary claim a second time lowering it to \$500.00.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?

Is the landlord entitled to retain all or part of the security deposit?

Is the tenant entitled to return of the security deposit?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the both the tenant's claim and the landlord's cross claim and my findings around each are set out below.

Both parties confirmed that this tenancy began on January 1, 2019 on a fixed term tenancy until April 31, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated January 14, 2019. The monthly rent was \$1,050.00 payable on the 1st day of each month. A security deposit of \$500.00 was paid.

During the hearing both parties confirmed that this was a shared accommodation in which the tenant had a separate semi furnished bedroom and shared the common living areas.

The landlord seeks monetary claim of \$1,050.00 for the loss of rental income and \$100.00 for recovery of the filing fee. The landlord claims that the tenant failed to provide proper written notice and vacated the rental unit on April 28, 2019. The tenant confirmed that she vacated the rental unit on April 28, 2019, but that verbal notice was given to the landlord. The landlord disputes this claim. The tenant refers to a copy of a text message between the two parties which state,

Okay thank you! :) I won't even be in the country to live there and I said maybe i don't think so becuz I end school in April! I won't even be in he country in two days

The tenant seeks an amended monetary claim for return of the original \$500.00 security deposit. Both parties confirmed the tenant provided her forwarding address via email on May 13, 2019.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

In the landlord's claim for loss of rental income of \$1,050.00, I find that the landlord has provided sufficient evidence to satisfy a claim. The tenant's argument that she provided verbal notice supported by the above noted text message is ambiguous at best. A notice to end tenancy should provide an end date to the landlord so that there are no questions on when the tenancy shall end. In this case, the tenant's text message is questionable as it gives a vague answer of ending her schooling at the end of April as her formal notice to end tenancy. I find that this is insufficient as a proper notice to end tenancy. A notice to end tenancy must be in writing, stipulating an actual end date. On this basis, I find that the tenant failed to provide proper 1 months' notice. The landlord has been successful in the monetary claim for loss of rent of \$1,050.00.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee.

Section 38 of the *Act* requires the landlord to either return all of a tenant's security and/or pet damage deposit(s) or file for dispute resolution for authorization to retain the security and/or pet damage deposit(s) within 15 days of the end of a tenancy or a tenant's provision of a forwarding address in writing. If that does not occur, the landlord is required to pay a monetary award pursuant to subsection 38(6) of the *Act* equivalent to the value of the security and/or pet damage deposit(s).

In this case, both parties confirmed the tenant provided her forwarding address in writing via email on May 13, 2019. While currently email is not considered "in writing" under the current legislation, I find that this is sufficient as the landlord confirmed receipt of the address and accepted it on that basis as provided in her direct testimony during the hearing.

A review of the landlord's application shows that the landlord filed an application for dispute on May 21, 2019. This is 23 days after the end of tenancy (April 28, 2019), which is 8 days beyond the allowed 15 day period. On this basis, I find that the landlord failed to apply for dispute within

the allowed 15 day period as per the Act. As such, I find that the tenant is entitled to compensation under section 38 (6) of the Act which is a monetary award equal to the \$500.00 security deposit.

In offsetting these claims, the landlord is granted a monetary order for \$650.00. The landlord's monetary claim total of \$1,150.00 - \$500.00 the tenant's award under section 38 (6) of the Act.

Conclusion

The landlord is granted a monetary order for \$650.00.

This order must be served upon the tenant. Should the tenant fail to comply with this order, this order may be filed in the Small Claims Division of the Provincial Court and 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: August 29, 2019

Residential Tenancy Branch