



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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”).

On October 9, 2019, the Landlord filed an application requesting to recover unpaid rent; to keep a security deposit or pet damage deposit; and to recover the cost of the filing fee.

On October 19, 2019 the Tenant filed an application for the return of the security deposit and to recover the cost of the filing fee.

The Landlord and Tenant appeared at the hearing. The hearing process was explained, and the participants were asked if they had any questions. The Landlord and Tenant 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 keep the security deposit towards unpaid rent?
- Is the Tenant entitled to the return of the security deposit?

Background and Evidence

The Parties testified that the tenancy began on May 1, 2018, as a six-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,250.00 was due to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$625.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that on August 14, 2019 the Tenant gave notice that he would be vacating on September 15, 2019. The Landlord testified that the Tenant only paid \$625.00 towards September 2019 rent.

The Landlord testified that the rental unit was not re-rented for last half of September 2019 and the Landlord suffered a loss of rent in the amount of \$625.00.

The Landlord testified that the Landlord received the Tenant's forwarding address in writing on October 4, 2019.

In response, the Tenant provided testimony confirming that he gave notice to end tenancy on August 14, 2019, and moved out of the rental unit prior to September 15, 2019. The tenant testified that he only paid half of the rent owing for September 2019 because he believed he provided sufficient notice to end the tenancy.

Analysis

Section 45 of the Act provides that 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.

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

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.

Residential Tenancy Policy Guideline # 5 Duty to Minimize Loss provides the following information:

Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

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

Security Deposit

The Landlord applied for dispute resolution on October 19, 2019, which was within 15 days of when the Tenant provided the Landlord with his forwarding address.

I find that the security deposit will apply to any award granted for unpaid rent.

Rent

I find that a Tenant may end a month to month tenancy by giving the Landlord notice to end the tenancy not earlier than one month after the date the Landlord receives the notice and effective on a date that is the day before the day in the month that rent is payable under the tenancy agreement.

I find that rent is due to be paid to the Landlord by the first day of each month. I find that the Tenant's notice that he would be vacating the rental unit on September 15, 2019 was not proper because the earliest date the tenancy could end was September 30, 2019.

I find that the Landlord is entitled to compensation for any loss of rent up to the earliest time that the Tenant could legally have ended the tenancy. The Tenant is obligated to pay the rent owing under the tenancy agreement for the entire month of September 2019.

I award the Landlord the amount of \$625.00 for unpaid September 2019 rent.

As to the recovery of the filing fees the parties paid for the applications for dispute resolution, the Landlord was successful. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

The Landlord established a monetary award in the amount of \$725.00. I authorize the Landlord to keep the security deposit of \$625.00. 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 monetary order must be served on the Tenant and may be enforced in Provincial Court.

Conclusion

The Tenant failed to end the tenancy in accordance with the *Act* and tenancy agreement.

I find that the Tenant owes the Landlord \$625.00 for the loss of September 2019, rent.

The Landlord is authorized to keep the security deposit of \$625.00 and is granted a monetary order for the cost of the \$100.00 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: February 24, 2020

Residential Tenancy Branch