



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSDS-DR, FFT, MNRL, FFL

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”).

The Tenant applied on March 30, 2021 for:

1. An Order for the return of the security deposit - Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on April 9, 2021 for:

1. A Monetary Order for unpaid rent - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions. Both Parties received the other Party’s evidence packages and confirmed the dates of their respective applications.

Issue(s) to be Decided

Is the Tenant entitled to return of double the security deposit?

Is the Landlord entitled to unpaid rent?

Are the Parties entitled to recovery of their filing fees?

Relevant Background and Evidence

The following are agreed or undisputed facts: On February 24, 2021 the Tenant viewed the rental unit for a monthly rent of \$1,800.00 and a start date of March 1, 2021, the

Landlord collected \$800.00 as a security deposit, the Landlord gave the Tenant the keys to the unit, and the Landlord allowed the Tenant to store belongings in the unit prior to the start of the tenancy. The Landlord emailed the Tenant a copy of the lease. The Tenant started to clean the unit on February 25, 2021 and complained to the Landlord about unworking appliances and the Landlord, through the Landlord's maintenance person, informed the Tenant that there was nothing wrong with the appliances. The Tenant did not sign the lease and did not move-into the unit. The Landlord received the Tenant's forwarding address on March 11, 2021.

The Tenant states that they informed the Landlord by text on February 26, 2021 that the Tenant was not going to move into the unit. The Tenant states that after informing the Landlord that they would not move into the unit, the Landlord said this was okay. The Tenant states that the Tenant informed the Landlord that they would retrieve the belongings stored in the unit before March 1, 2021 but that the Landlord did not agree to this date and told the Tenant that the belongings could not be collected until March 6, 2021. The Tenant provides copies of texts between the Parties.

The Tenant states that no move-in inspection was offered to the Tenant and that the Landlord told the Tenant to do the inspection and to inform the Landlord of the outcome of the Tenant's inspection. The Landlord states that the Parties did complete a mutual inspection of the unit on February 24, 2021, that the Landlord did not have an inspection report present for the inspection and that the Landlord later filled out the inspection report alone sending it to the Tenant for signature.

The Landlord states that the Tenant informed the Landlord on February 27, 2021 that the Tenant would not move into the unit. The Landlord states that nothing was said to the Tenant about the belongings in the unit and that on March 6, 2021 the Tenant had the belongings removed. The Landlord also states that the Tenant's brother was told to collect the Tenant's belongings on March 4, 2021 but that the brother informed the Landlord that they could not collect the belongings until March 6, 2021. On March 6,

2021 the Landlord advertised the unit online for the same rent and immediate occupancy. The Landlord states that although the unit was shown to several tenants, new tenants with good references were only found for an April 1, 2021 occupancy.

The Landlord claims unpaid rent of \$900.00 for March 2021. The Landlord also claims \$15.00 for the registered mail costs to send the Landlord's evidence package to the Tenant.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Despite the evidence of an unsigned tenancy agreement, based on the undisputed evidence that the Tenant paid a security deposit and was given the keys to the unit I find that there was a binding oral agreement for the Tenant to rent the unit and to pay rent on March 1, 2021. While the Tenant was free to end the tenancy, the undisputed evidence is that the Tenant did not provide the required month notice to end the tenancy. As the Tenant did not pay any rent for March 2021 or provide the Landlord with a month's notice to end the tenancy, I find that the Landlord is entitled to the rent claimed of **\$900.00**.

As nothing in the Act provides for compensation for costs to participate in the proceedings, such as the service of evidence to the other party, other than for the recovery of the filing fee I dismiss the Landlord's claim for registered mail costs. As the Landlord's claim for rent has been successful, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,000.00**.

Section 45(1) 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.

Section 44(1) of the Act provides that a tenancy ends, inter alia, where the tenant gives notice to end the tenancy or vacates or abandons the rental unit. Given the Tenant's evidence of ending the tenancy, I find that the Tenant did not give a month's notice to end the tenancy, however, based on the undisputed evidence that the Tenant's belongings were removed on March 6, 2021, I find that the tenancy ended no later than that date.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. Given the undisputed evidence that the Landlord received the Tenant's forwarding address on March 11, 2021 and as the Landlord did not return the security deposit or include a claim against the security deposit in its application made on April 9, 2021, I find that the Landlord must now pay the Tenant double the security deposit plus zero interest of **\$1,800.00**. As the Tenant has been successful with this claim I find that the Tenant is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,900.00**. Deducting the Landlord's entitlement from this amount leaves **\$900.00** owed to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$900.00**. If necessary, this order may be filed in the Small Claims 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 Act.

Dated: October 20, 2021

Residential Tenancy Branch