



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This conference call hearing was convened in response to two applications for dispute resolution as follows:

By the landlord: as an application for a Monetary Order for unpaid rent; for damage to the unit; to keep the security deposit; and to recover the filing fee associated with his application.

By the tenant: as an application for a Monetary Order for money owed or compensation for damage or loss under the Act, Regulation or tenancy agreement; for the return of double the amount of the security deposit; and to recover the filing fee associated with this application. The tenant's application included a letter with a monetary claim for other expenses such as emergency rent, storage fees, and moving expenses. The tenant did not serve the landlord with an amended application and therefore I will consider in this hearing the evidence that pertains to the matters identified in the tenant's original application. Concerning double the amount of the security deposit, it was not disputed that the tenant gave the landlord his forwarding address in writing. After reviewing the date of the landlord's application and in reviewing the facts of this case, the tenant reduced his monetary claim to the original amount of the security deposit.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

At the outset, the landlord confirmed that the unit was re-rented on May 1st, 2011 and therefore withdrew her claim for the loss of a rental income for that month.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

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

Is the landlord entitled to recover the filing fee?

Is the tenant entitled to a Monetary Order, and for what amount?

Is the tenant entitled to the return of the security deposit?

Is the tenant entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a basement suite. The parties did not dispute that pursuant to a written agreement, the month to month tenancy started on April 1st, 2011. The rent was \$1050.00 and the tenant paid a security deposit of \$525.00.

The landlord testified that the tenant wanted to move-in early even though the existing tenants could not leave until April 1st, 2011, and stated that she allowed the tenant to start moving in on March 15th for \$400.00. The landlord said that on March 19th, the tenant advised her that the suite was not to his satisfaction and needed repairs; the landlord stated that she acknowledged the tenant's concerns and that she would tend to the issues. The landlord said that she did not hear anything more from the tenant, and that she did not get a response from the tenant concerning rent on April 1st. She said that she returned the next day and found the tenant's handwritten notice that he had moved out.

The landlord said that the tenant came to her door on April 6th, 2011 demanding a refund for the \$400.00 rent, and the return of his security deposit. They also discussed

the disposal of certain items; the landlord said that the tenant told her that she could get rid of them, which cost the landlord \$20.00 in disposal fees.

In her documentary evidence, the landlord provided 12 photographs showing that the issues addressed by the tenant had been repaired during the month of April 2011.

In his documentary evidence, the tenant provided 31 photographs taken when he started moving in after March 15th, purported to identify problems with the furnace, the electrical system, and the condition of the walls and the flooring such as scuffs, scrape marks, holes, and dirt.

The tenant did not agree with the landlord's version that the existing tenants would remain until April 1st; he argued that the suite was viewed on March 11th, and that it was supposed to be cleaned, fixed and ready for occupancy on March 15th. He said that he addressed his concerns but that he never saw the landlord between March 15th and April 1st, and that she did not tend to the issues as agreed. He said that when the furnace's carbon monoxide detector went off (on March 22nd according to his documentary evidence), he was upset and decided that he would not occupy the unit. He did not dispute the note left to the landlord on April 2nd, and said that he never slept in the unit except the day that he moved out.

Analysis

The parties were informed at the hearing that under Section 16 of the Act, the rights and obligations of the landlord and tenant under a tenancy agreement take effect from the date the tenancy is entered into, whether or not the tenant ever occupies the rental unit.

The documentary evidence confirms that the tenancy started April 1st, 2011. The parties entered into a verbal agreement that allowed the tenant access to the unit March 15th, but since this portion of their testimony is at odds, I must rely on the best evidence and find that the tenancy started April 1st, 2011 as stated in writing.

Section 33 of the *Residential Tenancy Act* describes a problem with the primary heating system as an emergency repair. The Act provides that in this case, the tenant must make at least 2 attempts to contact the landlord, and to allow the landlord reasonable time to make the repairs. The landlord provided evidence that these repairs were made in April, which is within the month the tenancy started; therefore I do not find that the landlord was negligent or breached the Act or the tenancy agreement in that regard. Further, there are no provisions allowing the tenant to end the tenancy without proper notice for the reasons he submitted.

Section 45(1) of the Act states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice. I find that the tenant did not comply with the Act. A remedy for the tenant would have been to seek assistance from the Residential Tenancy Branch and to file an application for dispute resolution if the landlord failed to address the issues promptly. In this case the tenancy was 2 days old and I find that tenant's decision to vacate without proper notice premature.

I find that the landlord is entitled to recover the loss of rental income for April 2011. I also grant the landlord the cost of disposing the tenant's belongings for \$20.00.

Conclusion

The tenant's application is dismissed.

The landlord established a claim of \$1070. I authorize the landlord to retain the tenants' \$525.00 security deposit for a balance owing of \$545.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$595.00.

This Order may be registered 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 *Residential Tenancy Act*.

Dated: July 21, 2011.

Residential Tenancy Branch