



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the tenant – MNSD, FF

For the landlords – MNSD, MNR, FF

Introduction

This hearing was convened by way of conference call in repose to both parties' applications for Dispute Resolution. The tenant has applied for the return of the security deposit and to recover the filing fee from the landlords for the cost of this application. The landlords have applied for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenant's security deposit; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the tenant entitled to recover his security deposit?
- If not are the landlords entitled to keep the security deposit?
- Are the landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

Both parties agree that the tenancy agreement in place indicates that this month to month tenancy started on September 15, 2011. Rent for this unit was \$985.00 per month and was due on the first day of each month. The tenant paid a security deposit of \$492.50 on September 14, 2011. The tenancy ended on October 13, 2011 and the tenant gave the landlord his forwarding address in writing on October 18, 2011 and requested the landlords return his security deposit.

The tenant testifies that he never actually moved into the rental unit. The tenant states he rented the unit for the use of his employee but no one ever moved into the unit and only two mattresses were moved in. The tenant testifies that when he realised he did not require the unit he tried to contact the landlords to inform them but he could not get hold of them. The tenant agrees he gave the landlords verbal notice to end the tenancy a few days before he actually ended the tenancy and removed the two mattresses.

The tenant agrees he did sign the move out inspection report in the section that stated the tenant agrees the landlord can keep his security deposit of \$492.50 but testifies that he signed this without reading it carefully and the landlords added the words about his security deposit after it was signed by the tenant.

The landlords testifies that the tenant signed the move out inspection and agreed the landlords could keep the security deposit as they told him he had not given proper notice to end the tenancy and the security deposit would be used to offset against the rent owed for November, 2011. The landlord testifies that they attempted to re-rent the unit by advertising it but to date the unit has not been re-rented. The landlords have provided copies of advertising invoices in evidence.

The landlords' testify that the tenancy agreement in place contains information about what notice is required from the tenant if he wants to end the tenancy.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for unpaid rent, s. 45(1) of the *Residential Tenancy Act (Act)* states: *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.

Regardless of whether or not the tenant moved into the rental unit the tenant did enter into a tenancy agreement with the landlords to rent the unit on a month to month basis as such the tenancy agreement becomes a binding agreement which the tenant must then comply with. Contained within that agreement is information for the tenant about how to end the tenancy and does inform the tenant that he must give the landlords one clear months notice as indicated under s. 45(1) of the *Act*. Consequently, I find the tenant failed to give the

landlords proper notice to end the tenancy agreement and the landlords are therefore entitled to recover a loss of rental income for November, 2011 to the sum of \$985.00 pursuant to s. 67 of the *Act*.

With regards to the tenants claim to recover the security deposit; the landlords have provided a copy of the condition inspection report which shows the tenant has signed to agree the landlord may keep the security deposit of \$492.50. The tenant argues that he did not know what he was signing as the landlord filed in the detail after it was signed by the tenant. The landlords dispute this allegation and the burden of proof falls to the tenant to show that the landlords acted fraudulently. The tenant has provided no evidence to support his claim and in any event the relevant wording in this section of the report is part of the report and not hand written by the landlord as to what the tenant is agreeing to. Before signing any documents a tenant should read through carefully what he is signing and if unsure he should defer signing until he has taken advice as to the nature of the document he is signing. Consequently, I find the tenant has agreed the landlords may keep his security deposit of \$492.50 and therefore the tenant's application for the return of his security deposit is dismissed.

As the tenant has agreed in writing that the landlords may keep the security deposit I have offset the amount of the deposit against the unpaid rent.

I have reviewed the landlord application for unpaid utilities of \$45.56. The landlord did not mention utilities in their verbal testimony. I have no knowledge if the landlords wished to proceed with this matter or over looked it in their testimony. Consequently, this section of the landlords claim is dismissed with leave to reapply.

I further find as the landlords have been successful with their claim that the landlords are entitled to recover the **\$50.00** filing fee from the tenant. The landlords are entitled to a Monetary Order for the outstanding balance of rent plus the filing fee as follows:

Loss of income for November	\$985.00
Plus filing fee	\$50.00
Less security deposit	(\$492.50)
Total amount due to the landlord	\$542.50

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$542.50**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed in its entirety without leave to reapply

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 02, 2012.

Residential Tenancy Branch