



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNDC, MNSD, FF.*

Introduction.

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, utilities and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her monetary claim. The tenant applied for the return of double the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Did the landlord suffer a loss of income? Is the landlord entitled to a monetary order for loss of income and the filing fee? Did the tenant give the landlord adequate notice to end the tenancy? Is the tenant entitled to the return of double the security deposit and the filing fee?

Background and Evidence

The tenancy started May 01, 2011 for a fixed term ending April 30, 2013. The monthly rent was \$1,400.00 payable in advance on the last day of the previous month.

Both parties agreed to the following sequence of events:

On September 30, 2012, the tenant accepted a job in another city, starting December 01, 2012. On October 01, 2012, the tenant gave the landlord notice to end the tenancy effective December 01, 2012. The landlord started looking for a new tenant and found one that wanted to move in on November 01, 2012. On October 12, 2012, the landlord requested the tenant to make arrangements to move out by November 01, 2012. The tenant had already made plans to move on December 01 but agreed to contact the new landlord to request a move in date of November 01. The new landlord obliged and the tenant changed all her plans and agreed to move out on November 01, 2012. She informed the landlord of this change by leaving a message on his telephone on October 14, 2012.

Later that day the landlord called the tenant to inform her that the deal had fallen through and that she should continue to rent until December 01, 2012. The tenant informed the landlord that all the arrangements were made to move on November 01. These arrangements included changes to the tenant's work schedule and to the tenancy agreement at the new place. The tenant offered to request the new landlord to change the dates one more time.

On October 15, 2012, the tenant informed the landlord that the new landlord was going to hold the new rental until November 15, 2012 and that she would move out effective that date.

The tenant gave her forwarding address to the landlord on November 06, 2012. The tenant moved out on November 09, 2012 and paid rent plus utilities up to November 10. The move out inspection was uneventful and after the move, the two parties communicated by text messaging regarding the return of the security deposit.

The landlord found a tenant for December 01, 2012 and wanted the tenant to cover rent and utilities for the period of November 15-30. The tenant had paid rent plus utilities up to November 10. During the hearing, the tenant agreed to pay rent and utilities up to November 15 which worked out to \$214.78. The landlord was requesting an additional amount of \$837.10 which included \$700.00 for rent for November 15-30 plus prorated utilities.

Analysis

Landlord's application:

Based on the sworn testimony of both parties, I find that the landlord ended the fixed term tenancy effective November 01, 2012, by requesting the tenant to move out by this date. The tenant made the arrangements to move out and then again at the landlord's request changed the move out date to November 15, 2012.

Based on the above, I find that the landlord is not entitled to the loss of income she suffered during the period of November 15-30, because she ended the tenancy on November 01, 2012. However, I find that the landlord is entitled to rent and prorated utilities up to November 15 in the amount of \$214.78.

Since the landlord has not proven her case she must bear the cost of filing her application.

Tenant's application:

The tenant has applied for the return of double the security deposit. Section 38 of the *Residential Tenancy Act* requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

I find that the tenant provided her forwarding address to the landlord on November 06 and moved out on November 09, 2012. The landlord made an application to retain the security deposit in a timely manner, on November 23, 2012 which is within the statutory time of 15 days. Therefore, I find that the tenant is not entitled to the return of double the security deposit but is entitled to the return of the base amount of the security deposit.

Since the tenant has not proven her claim for the return of double the security deposit she must bear the cost of filing their own application.

Overall the landlord has established a claim of \$214.78 and the tenant has established a claim of \$700.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$485.22 which consists of the difference between the established claims of both parties. I grant the tenant an order under section 67 of the *Residential Tenancy Act* for the balance due of \$485.22. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$485.22**.

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 28, 2013

Residential Tenancy Branch

