



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The Landlord seeks a monetary order for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The Tenant also seeks a monetary order for the return of double the security deposit.

Both parties have attended the hearing by conference call and have given testimony. As both parties have attended and have confirmed receipt of the notice of hearing package and the submitted documentary evidence, I am satisfied that both parties have been properly served.

The Tenant's Advocate has requested that the hearing be adjourned to add the co-tenant to the Landlord's Application. The Landlord states that he is unaware of the co-tenants new address and has applied against the tenant in this hearing as such. The Tenant's request to adjourn the hearing to add a co-tenant is dismissed. Although there are two co-tenants involved in this tenancy, the Landlord is only able to locate the tenant, P.P. in this case and has properly applied against this tenancy. The Tenant's request for an adjournment is denied. The hearing shall proceed.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order?
- Is the Landlord entitled to retain the security deposit?
- Is the Tenant entitled to a monetary order?

Background and Evidence

This Tenancy began on February 1, 2013 on a fixed term tenancy ending on February 1, 2014 as shown by the submitted copy of the signed tenancy agreement. The

monthly rent was \$1,475.00 payable on the 1st of each month and a security deposit of \$737.50 and a pet damage deposit of \$175.00 was paid on February 1, 2013. There are two co-tenants listed on the signed tenancy agreement, P.P. and F.F.

The Landlord states that the Tenants vacated the rental unit and gave back possession of the rental unit on May 31, 2013. The Landlord states that the rental unit was re-rented on July 1, 2013 as per the submitted copy of the new signed tenancy agreement with new tenants. The Landlord states that the \$175.00 pet damage deposit was returned to the co-tenant, F.F. who vacated the rental unit on May 31, 2013 as there was no damage caused by pets and that no forwarding address was given. Both parties agreed that the co-tenant, P.P. vacated the rental unit on April 18, 2013 due to a domestic dispute resulting in the Tenant, P.P. complying with a court order to not contact the co-tenant, F.F. or attend her residence.

The Landlord seeks a monetary claim of \$2,193.00. This consists of \$1,475.00 for the loss of rental income for June 2013 because the Tenants failed to provide proper notice to vacate the rental unit. The Landlord also seeks \$218.00 for Strata Fee Fines imposed because the Tenants did not comply with the Strata rules on disposing of garbage. The Landlord also seeks \$500.00 for the Landlord's time spent re-advertising, promoting the rental unit for his personal labour and vehicle gas spent for which the Landlord estimates at 30 hours at \$25.00 per hour. The Tenant disputes the Landlord's monetary claims. The Tenant states that the Landlord applied to appeal the strata fines and the Landlord has acknowledged that no payments have been made for these fines. The Tenant also disputes that the Landlord has failed to provide any evidence of an actual amount for the loss of time for the advertising, promotion of the suite or receipts for any gas purchases.

The Tenant seeks a monetary order of \$1,475.00 for the return of double the security deposit (\$737.50). The Tenant stated that he vacated the rental unit on April 18, 2013 in compliance with a court order that he was no longer a tenant. Both parties have confirmed that the Tenant served upon the Landlord a letter explaining the situation with his intent.

Analysis

Residential Tenancy Policy Guideline #13, the Rights and Responsibilities of Co-Tenants state,

This Guideline clarifies the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement.

A tenant is the person who has signed a tenancy agreement to rent residential premises. If there is no written agreement, the person who made an oral agreement to rent the premises and pay the rent is the tenant. **Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement.** Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. **This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants.** The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.

Where co-tenants have entered into a fixed term lease agreement, and one tenant moves out before the end of the term, that tenant remains responsible for the lease until the end of the term. If the landlord and tenant sign a written agreement to end the lease agreement, or if a new tenant moves in and a new tenancy agreement is signed, the first lease agreement is no longer in effect.

I find that as co-tenants, both parties ended the tenancy when the Tenant, F.F. vacated the rental unit and returned possession on May 31, 2013. Although the Tenant, P.P. informed the Landlord of the circumstances of his departure, there is no evidence that both parties mutually agreed to amend the signed tenancy agreement removing the Tenant, P.P. from the agreement. There is also no evidence of a new agreement signed by the Tenant, F.F. with her interm roommates during the Tenant, P.P.'s absence. As such, the Tenancy did not end until possession was returned to the Landlord on May 31, 2013 and the co-tenancy was in effect until that date.

As such, the Landlord's claim for the loss of rental income of \$1,475.00 for June 2013 has been established. The Tenant's claim for the return of double the security deposit has not met the burden set out in section 38 of the Act. The Tenant's claim for double is dismissed. However, the Tenant is entitled to the claim of \$737.50 for the original security deposit.

The Landlord's claim for the recovery of \$218.00 in strata fines has not been established. This claim is disputed by the Tenant. Although the Landlord has provided evidence of strata fines being imposed because of the actions of the Tenants, the Landlord through his own direct testimony has stated that none of the fines have been paid and has not disputed that the strata fines are under appeal. With no proof of an actual amount paid by the Landlord, the claim is dismissed.

I find that the Landlord has failed to establish a claim for \$500.00 in spent time advertising, promoting the suite, including gas for his vehicle and labour. This claim is disputed by the Tenant and the Landlord has failed to provide sufficient evidence of the 30 hours spent or of any justification of the \$25.00 per hour rate. As well, Section 72 of the Act addresses **Director's orders: fees and monetary order.** With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the

award of costs associated with litigation to either party to a dispute. The Landlord's claim for personal time is denied.

The Landlord has established a total monetary claim of \$1,475.00 for the loss of rent. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$737.50 security deposit in partial satisfaction of the claim and I grant a monetary order for \$787.50. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$787.50.
The Landlord may retain the security deposit.

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: October 18, 2013

Residential Tenancy Branch

