



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNDC FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenant. Both the landlord and the tenant participated in the teleconference hearing.

At the outset of the hearing the landlord stated that he wished to withdraw his application. The tenant did not oppose this, and I therefore did not consider the landlord's application in this hearing.

The landlord confirmed that he had received the tenant's application and evidence. The landlord and the tenant gave oral testimony in the hearing. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the tenant entitled to monetary compensation as claimed?

Background and Evidence

The tenant viewed the rental property in May 2013, and on May 30, 2013 the landlord and the tenant signed the tenancy agreement for the tenancy to begin on August 1, 2013. In early June 2013 the tenant paid the landlord a security deposit of \$3,500 and a pet deposit of \$3,500. On July 17, 2013 the tenant paid the landlord \$7,000 for the rent for August 2013. The landlord gave the tenant the rental unit keys on August 1, 2013.

The tenant and the landlord began emailing each other about the condition of the rental unit. On August 4, 2013 the tenant hired a licensed inspector to inspect and prepare a report on the condition of the rental unit. The tenant informed the landlord via email that he believed the rental unit was unliveable. On August 7, 2013 the tenant returned the rental unit keys to the landlord.

Tenant's Claim

The tenant submitted that he personally served the landlord with his forwarding address in writing on August 7, 2013, at the same time that he returned the keys. The landlord did not return or make an application to keep the security and pet deposits, and the tenant has therefore claimed double recovery of the deposits, in the amount of \$14,000.

The tenant has also claimed recovery of the \$7,000 rent paid for August 2013, on the basis that the landlord breached the tenancy agreement by not renting the house in a livable condition. The tenant submitted that the house had several major safety and security issues. As evidence to support his claim, the tenant submitted a copy of the inspector's August 4, 2013 report on the conditions of the rental property at that time.

Landlord's Response

In regard to the tenant's forwarding address, the landlord stated that he did not accept or read the letter, but he acknowledged that it was handed to him with the keys.

In regard to the rent paid for August 2013, the landlord stated that when the tenant said the house was unliveable, the landlord said he would return the rent and deposits if the tenant would provide the landlord a copy of the inspector's report. The tenant did not do so. The landlord stated that the addendum to the tenancy agreement set out the type of repairs that the landlord agreed would be done, but the landlord told the tenant that he was not going to spend money on major renovations or aesthetic work. The landlord stated that he and his family lived in the house before and they had no safety concerns. The landlord submitted that nowhere in the inspector's report did it say that the house was not safe.

Analysis

In regard to the security and pet deposits, section 38 of the 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 deposit(s) or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to double recovery of the deposit(s).

In this case, I find that the tenancy ended on August 7, 2013, and that the tenant provided his forwarding address in writing on that date. The fact that the landlord did not "accept" or read the letter does not mean that the tenant failed to serve it on the landlord in accordance with the Act. I further find that the landlord failed to repay the security

deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. The tenant is therefore entitled to double recovery of the pet and security deposits, in the amount of \$14,000.

I find that the tenant is not entitled to recovery of the rent for August 2013, as the tenant did not provide sufficient evidence to establish that the rental unit was unlivable. The tenant could have made an application for repairs and monetary compensation, but instead the tenant chose to end the tenancy.

As the tenant's claim for more than \$5,000 was successful, I find he is entitled to recovery of the \$100 filing fee for the cost of his application.

Conclusion

The landlord's application is dismissed with leave to reapply.

The tenant's claim for return of rent is dismissed.

I grant the tenant an order under section 67 for the balance due of \$14,100. 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 *Residential Tenancy Act*.

Dated: December 19, 2013

Residential Tenancy Branch

