



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding COLDWELL BANKER HORIZON REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNSD, MND, MNR, MNDC, 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 the cost of repairs, loss of income, unpaid rent and the filing fee. The tenant applied for a monetary order 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

Is the landlord entitled to a monetary order? Is the tenant entitled to the return of double the security deposit?

Background and Evidence

The tenancy started on October 01, 2012 and ended on October 31, 2013. The monthly rent was \$2,076.00 due on the first of the month. Prior to moving in, the tenant paid a security deposit of \$1,000.00. During the hearing the tenant agreed that he owed \$5.00 in unpaid rent.

On September 24, 2013, the tenant provided the landlord with notice to end the tenancy with an effective date of October 31, 2013. The tenant moved out on October 20, 2013 and agreed to allow the landlord to show the unit in his absence, to prospective tenants. Despite agreeing to allow the landlord to show the unit in his absence, the tenant gave the security personnel instructions to call him when the landlord wanted access to the building for the purpose of showing the rental unit. The landlord stated that the tenant was uncooperative with regard to showing the rental unit and therefore the landlord was unsuccessful at three of the four attempts to show the unit.

The landlord stated that the unit is located in an area that is very slow during the months of November, December and January and for this reason there was very little interest in the rental unit during these months. The landlord expressed his opinion that had the tenant allowed showings in October without difficulty, a tenant would have been found immediately and the landlord would not have suffered the loss of income for the three months that the unit remained vacant. A new tenant was found for February 01, 2014.

The tenant stated that he did not prevent the landlord from showing the unit and therefore he is not responsible for the loss of income suffered by the landlord.

Both parties filed photographs of the rental unit and the inspection reports at the time the tenancy started and ended. The photographs show a fair amount of damage to the walls, floors and doors. The tenant stated that he is in a wheel chair and the damage appears to be consistent with that caused by the use of a wheelchair. The tenant argued that some of the damage was present at the start of tenancy and is indicated in the move in inspection report.

The tenant has applied for the return of double the security deposit, based on the fact that he did not receive a copy of the landlord's application within 15 days of the end of tenancy.

The landlord is claiming \$6,243.00 for loss of income and a total of \$777.00 for patching and painting the walls and repairing the floors.

Analysis

Landlord's application:

Section 45 of the *Residential Tenancy Act*, states 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 receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement. Based on the testimony of both parties, I find that the tenant gave the landlord adequate notice to end the tenancy.

The parties offered contradictory testimony regarding the showing of the rental unit. Even if I accept that the tenant was uncooperative, there is also another factor that played a role in the three month vacancy that followed the end of tenancy. As per the landlord's testimony the landlord was also unable to find a tenant for seasonal reasons.

Since the tenant provided adequate notice to end the tenancy and the vacancy was a result of a slow season, I find that the tenant is not responsible for the loss of income suffered by the landlord.

Based on the photographs filed by both parties, the condition inspection reports and the verbal testimony of both parties, I find that the tenant caused damage to the rental unit. The photographs depict damage that is consistent with the use of a wheel chair. The landlord has made a claim to repair this damage and has filed an invoice to support his claim. Accordingly, I award the landlord \$777.00 towards the repair of the damage.

Since the landlord has proven a portion of his claim, I award him \$50.00 towards the recovery of the filing fee.

Overall the landlord has established a claim of \$832.00 which includes \$777.00 for repairs, \$5.00 for unpaid rent and \$50.00 for the filing fee.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the deposit.

In this case, the tenant provided his forwarding address at the end of tenancy on October 31, 2013. The landlord filed his application on November 14, 2013 which is within the legislated time frame of 15 days. Therefore the tenant is not entitled to the return of double the security deposit but is entitled to the return of the base amount of \$1,000.00.

Since the tenant has not proven his case, he must bear the cost of filing his application.

The landlord has established a claim of \$832.00 while the tenant has established a claim of \$1,000.00. I will use the offsetting provisions of section 72 of the *Act* to grant the tenant a monetary order in the amount of \$168.00 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 amount of \$168.00. 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 **\$168.00**.

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 05, 2014

Residential Tenancy Branch

