



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MND, 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 loss of income, unpaid utilities, cost of cleaning and the filing fee. The tenant applied for a monetary order for the return of double her security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income; unpaid utilities, cost of cleaning and the filing fee? Is the tenant entitled to the return of double the security deposit and the filing fee?

Background and Evidence

The tenancy started on June 01, 2014 for a fixed term of six months ending on November 30, 2014. The monthly rent was \$1,300.00 payable on the first of each month. The tenant paid a security deposit of \$650.00. A tenancy agreement was filed into evidence. The tenant was responsible for the cost of utilities. The tenancy would continue as a month to month tenancy upon completion of the fixed term.

The tenant stated that on October 22, 2014, she contacted the landlord by text message and asked if she could extend the term of the tenancy up to December 15, 2014. The landlord responded that she could if she paid rent for the full month of December 2014. The tenant stated that she spoke with the landlord on October 23, 2015 to let him know that she was not interested in renting the unit for December. The landlord advertised the availability of the rental unit and had some showings.

On November 01, the landlord informed the tenant by text message that she could stay until December 15, 2014 and pay rent for half the month. The tenant replied by text message and let the landlord know that she would be moving out on November 30, 2014. On November 14, 2014 the landlord informed the tenant that a new tenant was found for December 16, 2014. The tenant moved out on November 30, 2014 and requested the return of the security deposit. On December 15, 2014 the landlord made this application.

The landlord is claiming \$1,300.00 for loss of income for the month of December 2014, \$113.14 for unpaid utilities to November 30, 2014 and \$75.00 for the cost of cleaning. The landlord has filed into evidence a copy of the utility bill and photographs of a few items left behind by the tenant. The tenant stated that she cleaned the unit and filed photographs of the condition of the unit at the end of tenancy.

During the hearing, the landlord offered to retain the security deposit in full settlement of his claim. The tenant refused to accept the offer.

Analysis

Landlord's application:

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term 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
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I accept the landlord's evidence in respect of the claim. In this case, rent is due on the first of each month and the tenant provided the landlord with written notice on November 01, 2014, to end the tenancy on November 30, 2014. By giving notice on November 01, 2014, the earliest date that the tenant could end the tenancy is December 31, 2014. Accordingly I find that the tenant did not give the landlord adequate notice to end the tenancy, thereby causing the landlord to suffer a loss of income for the month of December.

The landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Based on the testimony of the landlord I find that he attempted to mitigate his losses and found a tenant for December 16, 2014.

Accordingly, I find that the landlord is entitled to **\$650.00**, which is the loss that he suffered.

The tenant agreed that she owed for utilities up to November 30, 2014. Accordingly I award the landlord his claim of \$113.14. Based on the photographs filed by both parties, I find that the tenant may have left a few personal belongs in the kitchen cabinets, but left the rental unit in a clean condition. Therefore I find that the landlord is not entitled to his claim of \$75.00 for cleaning. The landlord has proven most of his claim and therefore I award the landlord the recovery of the filing fee of \$50.00.

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. Based on the sworn testimony of both parties, I find that the landlord made an application for dispute resolution within 15 days of the end of tenancy and 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 \$650.00.

Since the tenant has not proven her case, she must bear the cost of filing this application.

Overall the landlord has established a claim of \$813.14. . I order that the landlord retain the security deposit of \$650.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$163.14. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$163.14**.

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: July 29, 2015

Residential Tenancy Branch

