



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNDC MNSD FF

Introduction

This hearing dealt with an application by the tenant for return of the security deposit and an application by the landlord for a monetary order, an order to retain the security deposit in partial compensation of the monetary claim and recovery of the filing fee for the cost of his application.

Issue(s) to be Decided

Is the tenant entitled to double recovery of the security deposit?

Is the landlord entitled to the monetary amounts claimed?

Is the landlord entitled to recovery of the filing fee for the cost of his application?

Background and Evidence

The undisputed evidence is as follows. The landlord and tenant met on September 21, 2008 and came to a verbal agreement that the tenant would rent the rental unit. On that date, the tenant paid the landlord a security deposit of \$700. On or about September 29, 2008 the tenant verbally informed the landlord that he would not be renting the unit. On October 29, 2008 the tenant provided the landlord with his written forwarding address and requested the return of his security deposit. The landlord did not return the security deposit. On November 5, 2008 the tenant made an application for dispute resolution regarding the security deposit. The landlord made his application for dispute resolution on December 5, 2008.

The evidence of the tenant was as follows. The tenancy was to commence on November 1, 2008. After the tenant gave verbal notice on September 29, 2008 that he

would not be moving in, the tenant placed an ad in the newspaper to assist the landlord in re-renting. The landlord refused to return the deposit. On December 23, 2008 the tenant spoke with a property manager for the complex where the rental unit is located, and the property manager told the tenant that the landlord was not currently allowed to rent the rental unit, according the by-laws for that area. The tenant seeks double recovery of the security deposit.

The evidence of the landlord was as follows. The tenancy was to commence on October 1, 2008. The landlord began advertising to re-rent the unit beginning in the first week of October. The landlord still had not re-rented the unit as of the date of the hearing, because he could not find suitable tenants who were willing to pay enough rent. The landlord's testimony is that he did hold a license allowing him to rent the unit. The landlord has claimed the following: \$700 for the security deposit; \$4200 for lost revenue for October, November and December 2008; and \$326.69 for pro-rated rent for September 23 to 30, 2008.

Analysis

In regard to the tenant's application, 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 tenancy did not commence, and that the tenant provided his forwarding address in writing on October 29, 2008. 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 a monetary order for the security deposit of \$700, accrued interest of \$2.93, and double the base amount of the security deposit in the amount of \$700, for a total of \$1402.93.

In regard to the landlord's application, the landlord is not entitled to claim the security

deposit except as compensation against other monetary amounts owed by the tenant, and I therefore dismiss that part of the landlord's claim. If a tenant seeks to end a tenancy, the landlord may claim for lost revenue against the tenant if the landlord is unable to re-rent. However, the landlord has a duty, as soon as he becomes aware that he may face loss of rent, to take all reasonable steps to re-rent as soon as possible. In this case, the landlord only provided documentary evidence of one ad placed in a Chinese-language newspaper for two weeks from November 18 to December 1, 2008. Further, the landlord did not re-rent because he was not satisfied with any of the prospective tenants and would not reduce some loss by re-renting at a reduced rent. I therefore find that the landlord has failed to prove that he took all steps reasonably necessary to mitigate his loss and he cannot claim lost revenue against the tenant.

Conclusion

I grant the tenant an order under section 67 for the balance due of \$1402.93. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The landlord's application is dismissed. As the landlord was not successful in his application, he is not entitled to recovery of the filing fee for the cost of his application.

Dated: January 6, 2009