



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for loss or damage and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. The tenant entered the hearing at 1:32 p.m. and was provided with the same initial information as the landlord. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

Issue(s) to be Decided

Is the landlord entitled to retain the deposit paid in satisfaction of her claim for one half of one month's rent revenue loss?

Is the landlord entitled to filing fee costs?

Background and Evidence

During the hearing the parties agreed that on May 30, 2009 the tenant provided the landlord with a deposit in the sum of \$537.50 and that the tenant agreed to take possession of the rental unit effective June 1, 2009. The parties also agreed that the tenant purchased some paint and that one room of the rental unit was painted by the tenant.

The landlord stated that the rental unit had just been painted but she agreed to allow the tenant to alter the colours. The parties agreed that some time within the first week of June the tenant told the landlord he would not move into the rental unit.

The tenant stated he did not move in due to work being completed on the rental unit. The landlord stated that the only work being completed was at the request of the tenant; that she was having a cabinet installed on the outside deck and that painting had taken place.

The landlord testified that she was able to mitigate her loss and find a new tenant effective June 15, 2009. The landlord is claiming compensation for one half of June's rent in the sum of \$537.50.

During the hearing the tenant offered the landlord a settlement and suggested the landlord return the \$120.00 cost of the paint to him and that the landlord retain the balance of the deposit paid. The landlord rejected this offer.

Analysis

I find that a tenancy was established by the parties. The tenant paid a deposit, assisted with painting and then decided he would not move in. The tenant offered no evidence that there were problems that led him to seek a remedy under the Act.

Section 16 of the Act provides:

The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Therefore, I find that the obligation of the tenant took effect on June 1, 2009 and that the tenant failed to provide the landlord with proper written one month's notice to end the tenancy.

Section 45 of the Act provides:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that



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(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Therefore, I find the landlord is entitled to compensation for one half of June rent in the sum of \$537.50.

Conclusion

I find that the Landlord has established a total monetary claim of \$587.50 comprised of one half of June, 2009 rent and the \$50.00 fee paid for this application. I order that the Landlord retain the deposit in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of \$50.00. This order may be filed in the Provincial Court (Small Claims) 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: September 25, 2009.

Dispute Resolution Officer