

Decision

Dispute Codes: MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and a cross-application by the tenants for an order for the return of double their security deposit. Both parties participated in the conference call hearing.

The landlord made her application on August 7 and served the tenants with the application for dispute resolution and notice of hearing by registered mail on the same date. The registered letter was returned to the landlord with a stamp indicating that the tenants were unknown at that address. The tenants testified that the landlord had sent the letter to the correct address, but as they were new at that address, an individual living in the same building sent the letter back as she did not recognize their names. I advised the tenants that because the landlord had acted within 15 days of the end of the tenancy and had properly served the hearing documents to the forwarding address provided by the tenants, they could not claim double their deposit. The tenants' claim is therefore dismissed.

Issue(s) to be Decided

Has the landlord established an entitlement to loss of income?

Background and Evidence

The parties agreed that the tenants were paying \$800.00 per month in rent and that they paid a \$400.00 security deposit at the outset of the tenancy. The parties further agreed that on July 5 the tenants gave the landlord notice that they would be vacating the rental unit on July 31. The tenants testified that they would have given notice on July 1, but were unable to find the building manager to do so. The landlord testified that she has an ongoing advertisement in the paper and that an advertisement was posted on Craigslist on July 1 because she had received a notice from another tenant in the building on that date. The landlord seeks to recover loss of income for the month of August as she was unable to re-rent the unit for that month. The parties agreed that the landlord was entitled to a \$25.00 late payment fee for the month of May. The landlord

withdrew her claim for an NSF fee for that same month.

Analysis

As the tenants have agreed that they owe a \$25.00 late payment fee for May, I award the landlord \$25.00.

As for the issue of lost income, the Act requires that tenants give notice no later than the day before rent is due for the last month of the tenancy. In this case, that means the tenants should have given notice no later than June 30. Regardless of whether the tenants' inability to find a building manager was their fault or the landlord's, the tenants have testified that they did not intend to give their notice until July 1, which was one day too late. I find that the tenants gave their notice to end tenancy late and their failure to comply with the requirements of the Act to serve their notice one full month in advance has left them exposed to liability for any loss which can be directly attributed to the late notice. I say that it must be directly attributable because there is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice. Section 7 of the Act provides as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord had a continuing advertisement in the newspaper and prior to the time the tenants gave their notice, she had an advertisement on Craigslist. In this case, there is no question that the landlord made reasonable efforts to minimize her losses thereby meeting the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established in section 7(1) in that she did not prove on the balance of probabilities that her loss resulted from the tenants' failure to comply with the Act. Had there been an interest in renting a suite in the building, the advertisements which were in place before the tenants gave their notice and during the entire month of July should have attracted prospective tenants. I find that the landlord's loss of income must be attributed to a dearth of interested tenants. Accordingly I

dismiss the landlord's claim for loss of income for the month of August.

As the landlord's success has been divided, I find it appropriate to award her one half, or \$25.00, of the filing fee paid to bring her application.

Conclusion

The landlord has been award a total of \$50.00. I order that the landlord retain \$50.00 from the \$400.00 security deposit and 59¢ interest she currently holds and I order the landlord to return the balance to the tenants forthwith. I grant the tenants a monetary order under section 67 for \$350.59. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated November 25, 2009.