



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, 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 money owed or compensation for damage or loss; a monetary Order for unpaid rent; to retain all or part of the security deposit, and to recover the filing fee from the Tenants for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present relevant oral evidence, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to compensation for loss of revenue incurred as a result of a premature end to a fixed term tenancy agreement; compensation for liquidated damages; compensation for a garage door opener; to keep all or part of the security deposit; and to recover the filing fee for this Application for Dispute Resolution from the Tenant, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Landlord submitted a copy of a tenancy agreement that indicates the parties entered into a fixed term tenancy that was scheduled to begin on April 01, 2009 and end on March 31, 2010; that the Tenants were required to pay monthly rent of \$1,150.00 on the first day of each month; and that the Tenants paid a security deposit of \$400.00. The tenancy agreement was signed by all parties on March 27, 2009.

The Agent for the Landlord #2 and the Tenant agree that the Tenant sent an email to the Landlord on June 30, 2009, in which she advised the Landlord that the Tenants would be vacating the rental unit at the end of July of 2009.

The Agent for the Landlord #2 and the Tenant agree that the Tenant sent the Landlord an email on July 16, 2009, in which she advised the Landlord that she believed she had found a doctor who had recently moved to town who would be interested in renting her unit. The Tenant asked the Landlord if it wanted to enter into a tenancy agreement with the individual or if they wished to have her sublet the rental unit. The parties agree that the Landlord denied the Tenant the opportunity to sublet the rental unit and that the Landlord advised her that the potential tenant would have to enter into a new tenancy with the Landlord. The Agent for Landlord #2 stated that she is of the understanding that a person cannot sublet if they do not intend to return to the rental unit

The Agent for the Landlord #2 agreed that she did have a conversation with the potential new tenant who expressed an interest in entering into a tenancy agreement; that she advised the potential tenant that the monthly rent would be \$1,300.00; and that the potential tenant clearly advised her that she was not interested in renting the unit for that amount.

The Tenant submitted a letter from the individual who was interested in renting the rental unit, in which the individual indicated that she fully intended on renting the unit for \$1,150.00 beginning on August 01, 2009; that she submitted an application form to the rental agency; that she was subsequently advised by an agent for the Landlord that the rent was being increased to \$1,300.00; and that she asked that her application be withdrawn after being advised of the increase in rent. The Tenant contends that the Landlord would not have experienced a loss in revenue if the Landlord had not increased the monthly rent, as it would have been rented on August 01, 2009.

The Agent for the Landlord stated that the rental unit was advertised in several places and was eventually rented for November 08, 2009. The Landlord is seeking compensation, in the amount of \$\$3,450.00 for the loss of revenue experienced during the months of August, September, and October of 2009.

The Landlord is seeking compensation for liquidated damages, in the amount of \$400.00. The fixed term tenancy agreement stipulates that the Tenant will pay \$400.00 in liquidated damages if she ends the tenancy early.

The Landlord is seeking compensation, in the amount of \$74.88, for a garage door opener. The Agent for the Landlord #2 stated that the Tenant did not return the opener until October 05, 2009 and that they did not know that the Tenant was going to return the opener so they purchased a new one on August 13, 2009.

The Tenant stated that she was advised by one of the Landlords, by the first name of Luca, that she could retain the garage door opener until the new tenant arrived, as the Tenant continued to live in this residential complex. She stated that she was never advised that the new tenant was not moving in and she eventually returned the opener to Luca when she saw him in the complex. The Agent for the Landlord #3 stated that she is unaware of any agreement made between the Tenant and Luca. Neither party asked to call Luca as a witness.

Analysis

I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,150.00 on the first day of each month. I find that this fixed term tenancy was scheduled to end on March 31, 2009.

I find that the Tenant did not comply with section 45(2) of the *Act* when she ended this fixed term tenancy on July 31, 2009, which is earlier than the end date specified in the tenancy agreement. I accept that the Landlord experienced a loss of revenue as a result of the Tenant's non-compliance with the *Act*.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or the tenancy agreement, must do whatever is reasonable to minimize the damage or loss. In these circumstances, I find that the Landlord did not take reasonable steps to minimize their damage or loss.

I find that it would be reasonable to conclude that the individual who had expressed interest in renting the unit for August 01, 2009 would have rented the unit if it had been offered to her for the monthly rate of \$1,150.00, rather than the elevated rent of \$1,300.00. Therefore I find that the Landlord would not have experienced a loss in revenue if it had entered into a tenancy agreement with this individual. As the Landlord did not properly mitigate their losses, I dismiss the Landlord's application for compensation for loss of revenue for the months of August, September, and October.

Section 34(2) of the *Act* specifies that a landlord must not unreasonably withhold consent to sublet when a fixed term tenancy agreement is for six months or more. I find that the Tenant's written request to sublet this rental unit was denied by the Landlord without reasonable justification. I find that the issue of whether or not the Tenant intended to occupy the rental unit at the end of the sublet is not relevant to the issue of granting consent to sublet.

I find that it would be reasonable to conclude that the Tenant would have sublet the rental unit to the potential tenant if the Landlord had not unreasonably denied her the right to sublet or assign the rental unit. I find that it would be reasonable to conclude that the Tenant would not have ended this tenancy if her request to sublet the rental unit had been granted. In these circumstances, I find that the Landlord is not entitled to liquidated damages for an early end to this tenancy as their actions directly contributed to the end of the tenancy. On this basis, I dismiss the Landlord's application for liquidated damages.

In the absence of evidence that refutes the Tenant's statement that she was given permission from one of the Landlord's to retain the door opener until they found a new tenant, I accept that she was given permission to retain the opener for a period of time

after the end of the tenancy and that she returned it on October 05, 2009. On this basis, I dismiss the Landlord's application for compensation for purchasing a door opener.

Conclusion

I find that the Landlord has not established a monetary claim. As the Landlord's application has been without merit, I dismiss the Landlord's application to recover the cost of filing this Application for Dispute Resolution.

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: December 10, 2009.

Dispute Resolution Officer