



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

MNSD MNDC FF

Introduction

This hearing was convened in response to an application by the landlord for a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement (loss of revenue), to retain the security and pet damage deposits in partial satisfaction of the monetary claim and to recover the filing fee for this application.

Both, the landlord and the tenant attended the conference call hearing and participated with their submissions and sworn testimony.

Issues(s) to be Decided

Is the landlord entitled to the monetary amounts acclaimed?

Background and Evidence

The undisputed testimony is as follows. The tenancy began July 01, 2009 as a month to month tenancy agreement. Rent was in the amount of \$1950 per month payable in advance on the 1st of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$1000 and a pet damage deposit in the amount of \$500. The tenancy ended when the tenants vacated the rental unit on September 30, 2009.

The tenant testified that on August 31, 2009 they mailed to the landlord, via regular mail, a notice to end the tenancy September 30, 2009. The address to which they mailed the notice is in dispute. The landlord testified they never received such a notice. Regardless, at best the landlord would have received the mailed notice after August 31, 2009. The landlord testified that they received verbal notice of the tenant's intent to

vacate at the end of September, on September 03, 2009 – at which time the landlord requested and received a hand-written notice to end the tenancy. The landlord testified that 2 days after receiving the September 03rd notice they advertised the rental unit on a local classified listings website for October 01, 2009. The landlord provided a copy of the classified advertisement. According to the landlord they received some interest and some viewings which did not result in a new tenancy for October 01, 2009. Several days into the month of October 2009 (tenant claims October 03. Landlord claims October 04) one of the landlords determined to move into the rental unit themselves – rendering the rental unit unavailable thereafter.

The landlord is claiming loss of revenue for October 2009 in the amount of \$1950. The tenant disputes the landlord's claim as the landlord determined not to rent it for October 2009.

Analysis

It is not in dispute that the tenant did not give proper notice to end the tenancy, and it is not in dispute that the landlord, immediately after being notified the tenants were vacating attempted to mitigate losses by advertising the rental unit for the following month. When the landlord determined to occupy the rental unit themselves, the landlord effectively closed the door to anyone renting the unit for October 2009. It is left to pure speculation that had the landlord not moved in themselves that the rental unit may have rented October 5th; or, possibly more realistically October 15, 2009. As a result, I find that as the rental unit was not available for rent for almost, if not all of October 2009, the landlord cannot claim they suffered a revenue loss for the month. As a result, the landlord's claim and ancillary application for loss of revenue is hereby **dismissed** without leave to reapply.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the claim has been dismissed in its entirety without leave to reapply it is appropriate that I order the return of the tenant's security deposit. I so Order and I grant the tenant a Monetary Order in the amount of **\$1500**. If necessary, this order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord's application is **dismissed** without leave to reapply.

The tenant is being given a monetary order in the amount of **\$1500**.

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: January 14, 2010.
