

DECISION

Dispute Codes: MNSD

Introduction

This application was brought by the landlord seeking authorization to retain the tenant's security deposit against losses incurred as a result of the tenant leaving the fixed term rental agreement early.

Despite having been served with the Notice of Hearing sent by registered mail on December 5, 2009 to the forwarding address provided by her, the tenant did not call in to the number provided to enable her participation in the telephone conference call hearing. Therefore, it proceeded in her absence.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to retain the tenant's security deposit against losses arising from the tenant's breach of the fixed term rental agreement.

Background and Evidence

This tenant began on November 1, 2009 under a 12-month fixed term rental agreement set to end on October 31, 2010. Rent was \$1,100 per month and the landlord holds a security deposit of \$550 paid on October 15, 2009.

During the hearing, the landlord submitted a copy of a letter from the tenant dated November 12, 2009 advising that she had encountered unfortunate circumstances and was forced to move back to Ontario at the end of the month.

The landlord was able find a new tenants to move in on December 1, 2009 but, due to a decline in the market, at the reduced rent of \$1,050 per month. The landlord submitted a copy of the new tenants' rental agreement into evidence.

Therefore, the landlord requests authorization to retain the security deposit in set off against the loss of rent for the 11 months remaining in the fixed term agreement.

Analysis

Section 45 of the *Act*, which deals with tenant's notice to end tenancy, requires that notice be given at least one full month in advance, and in the case of a fixed term agreement, must not take effect on a date earlier than the end date on the rental agreement.

Section 7 of the *Act* provides that a party to a rental agreement who suffers a loss due to the non-compliance of the other with the legislation or rental agreement is entitled to receive monetary compensation from the non-compliant party.

Section 7 of the *Act* also requires that the party suffering the loss must do whatever is reasonable to minimize the loss.

In this instance, I find that the tenant breached the fixed term rental agreement. I further find that the landlords acted reasonably in lowering the rent to ensure an immediate new tenancy to minimize the loss, and that the tenant is responsible for the rent differential.

At a rent reduced by \$50 per months for the 11 months that remained in the rental agreement, the tenant's liability is \$550, the exact amount of the security deposit. Therefore, I find that the landlord is entitled to retain the full deposit in set off against the balance owed.

Conclusion

I hereby authorize and order, pursuant to section 72(2)(b) that xxxxxx may retain the full \$550 security deposit paid to the company by yyyyyyy on October 15, 2009 and the tenant's right to it is extinguished.

April 15, 2010