

DECISION

Dispute Codes MNSD, MNDC, MNR, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and a cross-application by the landlord for a monetary order. Despite having been served with the landlord's application for dispute resolution and notice of hearing by registered mail on February 19, the tenants did not participate in the conference call hearing.

Issues to be Decided

Are the tenants entitled to an order for the return of their security deposit?

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord's undisputed testimony is as follows. On January 8, 2010 the parties entered into a tenancy agreement which was set to commence on February 1. The tenants paid a \$675.00 security deposit. On January 18 the tenants sent the landlord a letter advising that they did not intend to move into the rental unit and requesting the return of the deposit. The landlord attempted to re-rent the unit but was unable to do so for the month of February. In the tenant's application they seek an order for the return of their security deposit. The landlord seeks an order for \$1,350.00 in loss of income for February, a 25.00 late payment fee for February and \$55.00 in advertising costs.

Analysis

I accept the landlord's undisputed testimony. I find that the tenants gave less than one full month's notice that they would not be proceeding with the tenancy and find that the landlord acted reasonably to minimize his losses by attempting to re-rent the unit for the month of February. I find that the landlord is entitled to recover \$1,350.00 in lost income for the month of February and I award him that sum. I find that the landlord is not entitled to an award for late payment of rent as the tenancy ended before it began and thus any payment made by the tenants cannot be construed as rent. I therefore dismiss the claim for the late payment fee. I also dismiss the claim for advertising costs as this was a month-to-month rather than a fixed term tenancy and the tenants could have ended the tenancy upon a month's notice in any event. I find the landlord is entitled to recover the \$50.00 filing fee paid to bring this application and I award him that sum.

The tenants' claim is dismissed without leave to reapply as they did not appear at the hearing to present their claim.

Conclusion

The landlord is awarded a total of \$1,400.00 which represents \$1,350.00 in loss of income for February and \$50.00 for the filing fee. I order the landlord to retain the \$675.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of \$725.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 03, 2010
