

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and a cross-application by the tenant for a monetary order. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Is the tenant entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on January 9, 2010 and was a month to month tenancy. Rent was set at \$750.00 per month and the tenant paid a \$375.00 security deposit. The parties further agreed that on or about January 16, 2010 the tenant gave notice that he would be vacating the unit on January 31. On January 25 the landlord gave the tenant a letter advising as follows:

Please be advised that we have an applicant that is interested to move in right away. Please let us know in the office as soon as possible if this is doable for you.

The tenant agreed to move out on January 27 to accommodate the landlord. The landlord testified that the prospective tenant changed her mind and decided not to rent the unit and that despite advertising the rental unit in January and February, the landlord was unable to re-rent the unit until March 1.

On February 8 the landlord filed an application for dispute resolution claiming loss of income for the month of February and retention of the security deposit. On March 15 the tenant filed an application for double the security deposit.

Analysis

Section 38 of the Act requires a landlord to either return a tenant's security deposit or make an application to retain the deposit within 15 days of the later of the end of the tenancy or the date the landlord receives the tenant's forwarding address in writing. I find that the landlord acted within the 15 day timeframe prescribed by the Act and accordingly dismiss the tenant's claim for double his security deposit.

The tenant was obligated under the Act to give one full month's notice that he was ending the tenancy. I find that the tenant failed to give adequate notice. I find that the landlord acted quickly and reasonably to minimize its losses by advertising the rental unit and I find that the inability to re-rent the unit was attributable to the late notice given by the tenant. I do not accept that the landlord's letter of January 25 bars the landlord from making a claim for loss of income for February. Rather, I find that the letter represented a genuine effort by the landlord to re-rent the unit immediately. The landlord had no control over whether the prospective tenant would choose to enter into a tenancy agreement and I accept that she exerted her best efforts to re-rent the unit.

I find that the landlord is entitled to recover \$750.00 in lost income for the month of February and I further find that the landlord is entitled to recover the \$50.00 filing fee paid to bring this application.

Conclusion

I award the landlord \$800.00. I order the landlord to retain the \$375.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under

section 67 for the balance due of \$425.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: May 13, 2010
