

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover loss of revenue for the month of April 2010 and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim. The landlord seeks loss of revenue in the amount of \$1800 due to the tenant's non compliance with the Residential Tenancy Act (the Act) - not providing the prescribed tenant's Notice to End .

Both, the landlord and the tenant, were represented in today's hearing and each participated with their submissions, and testimonial evidence.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Background and Evidence

The following is undisputed. The tenancy began on January 01, 2010 as a month to month tenancy agreement and ended when the tenant vacated on March 21, 2010. I do not have benefit of the agreement. Rent in the amount of \$1800 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$900 and a pet damage deposit of \$900. The landlord received a voicemail from the tenant on March 03, 2010 that they were vacating the rental unit by the end of March 2010.

The tenant purports to have spoken personally with the landlord (parents of the agent) on March 04, 2010 and provided the landlord with a written notice on the same day - in their mailbox. The landlord claims any written notice was provided to an address which was vacant at the time.

The landlord's agent (before this hearing) testified that she was out of the country for some months before March 25, 2010. She testified that she is the primary operating arm of the corporate landlord. She explaining that while she was out of the country, her parents - also landlords in this matter - were not capable to act or respond to the tenant's notice of March 03 and thereby make the necessary arrangements to re-rent

the unit and mitigate any losses. However, on her return March 25, 2010 she placed an advertisement for the rental unit on Craigslist and was able to secure a new tenant for May 1, 2010.

The landlord returned the pet damage deposit of \$900 to the tenant, and currently holds the \$900 security deposit.

Analysis

Based on the testimony of the parties, and on the balance of probabilities, I find that while the Act requires tenants to give one full month's notice that they are vacating, the Act does not attach a penalty for failing to do so, or automatically entitles the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice. However, Section 7 of the Act does provide as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the landlord may have made reasonable efforts to minimize their losses by advertising the rental unit as soon as possible, on March 25, 2010, thereby attempting to meet the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established in section 7(1) in that they did not prove on the balance of probabilities that their loss resulted from the tenant's failure to comply with the Act in not giving the prescribed written notice to end. Rather, the landlord testified that their loss resulted from the landlord's inability to respond or act to any notice to end from the tenant, even if the tenant had given the required written notice to end the tenancy as prescribed in the Act. **I find**, that due to the landlord's circumstances, the outcome would not have differed had the tenant been in compliance with the Act by submitting their Notice to End in writing, 3 days earlier.

As a result, the landlord's claim for loss of revenue for April 2010 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 landlord's claim has been dismissed without leave to reapply it is appropriate that I order the tenant's security deposit returned to the tenant.

I grant the tenant an Order for the amount of \$900.

Conclusion

The landlord's application is **dismissed**.

The tenant is being given a Monetary Order under section 67 of the Act in the amount of **\$900**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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*.
