



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent; damage or loss under the Act, regulations or tenancy agreement; retention of the security deposit and recovery of the filing fee. Both parties appeared at the hearing and were provided the opportunity to be heard and to respond to the submissions of the other party.

It was confirmed during the hearing that the landlord incorrectly spelled the respondent's name on the landlord's application. Upon request, I have amended the application to reflect the correct spelling.

Initially the landlord applied to recover \$1,530.00 from the tenant for unpaid rent and advertising. In serving the tenant with evidence the landlord sought to increase the claim to a total of \$2,900.13. The tenant testified that upon receipt of the evidence she understood the landlord was seeking a total of \$2,900.13. Therefore, I amended the landlord's claim as I was satisfied the tenant was not prejudiced by the amendment.

Issues(s) to be Decided

1. Is the landlord entitled to unpaid rent from the tenant?
2. Is the landlord entitled to compensation for damages or loss under the Act, regulations or tenancy agreement?
3. Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

I heard undisputed evidence from the parties as follows. In November 2009 the tenant and another individual applied to rent the rental unit offered by the landlord. On December 14, 2009 the tenant and the landlord executed a tenancy agreement for a tenancy set to commence January 1, 2010. The other individual's name appears as a tenant on the agreement; however, that individual did not sign the tenancy agreement. The tenant paid a \$625.00 security deposit to the landlord on December 14, 2009. The tenancy agreement provides that the tenants would be required to pay rent of \$1,250.00 on the 1st day of every month for a fixed term of six months. On December 29, 2009 the tenant sent the landlord an email seeking to end the tenancy. On December 31, 2009 the tenant gave the landlord written notice that she wished to terminate the tenancy and for the landlord to find replacement tenants as soon as possible.

The landlord testified the unit was re-rented as of February 6, 2010 for a prorated rent of \$862.50 and that subsequent months were rented for a reduced monthly rate of \$1,050.00. The landlord submitted that advertisements were placed in the newspaper and online. The rent was reduced in order to attract a rent as soon as possible so as to minimize losses. The landlord is seeking to recover the following amounts from the tenant:

Unpaid rent – January 2010	\$ 1,250.00
Loss of rent – February 2010	387.50
Loss of rent – March, April, May, June (\$200/mo.)	800.00
Advertising (\$280.00 + 70.00)	340.00
Landlord's lost wages	95.00
Courier expenses	<u>27.63</u>
Total claim	\$ 2,900.13

The tenant testified that the other individual backed out of the arrangement to rent the rental unit and the tenant could not afford the rent on her own. The tenant also explained that she is a student attending university and that being from out of town she was not aware of the distance to the university when she entered into the tenancy agreement. The tenant submitted that she was very overwhelmed at the time she entered into the tenancy due to final exams and moving from home. The tenant also submitted that she thought the tenancy agreement had to be signed by both named tenants to be binding.

As evidence for the hearing the landlord provided copies of the tenancy agreement, the rental application, advertising, various correspondence between the parties, the tenant's letter to end tenancy, and an audio recording of messages left on the landlord's voicemail.

Analysis

Section 16 of the Act provides that the rights and obligations of the landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Under the Act a tenancy agreement means an agreement, whether written or oral, express or implied, between a landlord and tenant respect possession of a rental unit. A security deposit may not be collected before a tenancy agreement is reached.

In this case, the tenant and landlord signed a tenancy agreement and the tenant paid and the landlord accepted a security deposit on December 14, 2009. Therefore, I am satisfied the parties named in this dispute entered into a tenancy agreement on December 14, 2009 and their respective rights and obligations under the agreement commenced at that time.

I do not find the absence of a signature on part of the other individual named as a tenant invalidates the agreement between the tenant and landlord. Therefore, I rely upon the written tenancy agreement as evidence of the terms agreed upon between the tenant and landlord.

Where a tenant ends a fixed term tenancy before the end of the term, the tenant has breached the tenancy agreement. In this case, I find the tenant ended the tenancy before the end of the term. I am satisfied the landlord suffered a loss as a result of the tenant's early termination of the tenancy.

The award for loss of rent is intended to put the landlord in the same financial position as if the tenant had not breached the agreement. This means the landlord may be eligible for compensation for any loss of rent up to the earliest time the tenant could have legally ended the tenancy. In this case, the tenant could not have legally ended the tenancy before June 30, 2010 based upon the agreed upon fixed term. Of course, as with any monetary claim, the claim is subject to sufficient evidence the applicant did whatever was reasonable to minimize the amount of the loss.

Based upon the landlord's testimony and documentary evidence, the landlord substantiated the amount of the loss incurred and satisfied me that the landlord did whatever was reasonable to minimize the amount of loss by advertising the unit very quickly after receiving the tenant's written notice and reducing the rent to attract a replacement tenant as soon as possible. Therefore, I award the landlord the amount claimed for unpaid rent, loss of rent and advertising costs.

While I appreciate the tenant may be young and inexperienced, as the tenant was informed at the hearing, the tenant's relationship with the other individual who intended to be a tenant does not form a basis to end the tenancy early and avoid obligations of the tenant under the tenancy agreement. Rather, any damages or loss incurred as a result of the relationship between the tenant and the other individual and between those

parties and does not involve the landlord. Further, it is upon the tenant to exercise due diligence in ensuring the rental unit will suit her needs before entering into a tenancy agreement.

I do not award the landlord lost wages as dealing with tenants and enforcing the terms of the tenancy agreement, including dispute resolution, are part of the ordinary duties of a landlord. I do not award courier costs to the landlord as such costs are not recoverable under the Act.

As the landlord was largely successful with this application I do award the filing fee to the landlord. I authorize the landlord to retain the security deposit in partial satisfaction of the rent owed the landlord. I provide the landlord a Monetary Order calculated as follows:

Unpaid rent – January 2010	\$ 1,250.00
Loss of rent – February 2010	387.50
Loss of rent – March, April, May, June (\$200/mo.)	800.00
Advertising (\$280.00 + 70.00)	340.00
Filing fee	50.00
Less: security deposit	<u>(625.00)</u>
Monetary Order	\$ 2,202.50

The landlord must serve the Monetary Order upon the tenant and may file it in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$2,202.50 to serve upon the tenant.

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: July 09, 2010.

Dispute Resolution Officer