



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income for the month of January 2010 and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for loss of income and for the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on June 01, 2008 for a fixed term of one year. The tenancy ended on December 31, 2009. The rent was \$1,130.00 due in advance on the first day of each month. The tenant paid a security deposit in the amount of \$545.00.

The landlord testified that on December 17, 2009, the tenant served a written notice to end tenancy effective January 31, 2010. However, the tenant moved out on December 27, 2009. The tenant stated that on December 21, there was a flood from the upstairs apartment and the fire department visited his unit to assess its safety. The tenant testified that based on the recommendation of the fire department, he moved out on December 27, 2009. The tenant did not file any evidence to support his claim of being forced to move out for safety reasons. The landlord stated that the leak was fixed immediately to prevent further damage to the units and he was not informed by the fire department that the unit was unsafe to be inhabited.

He stated that the availability of the unit was advertised on Craigslist and in the local newspaper, but it was too late to find a tenant for January. A tenant was found for February and the landlord is claiming loss of income for the month of January.

Analysis

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

The tenant moved out without giving the landlord adequate notice and despite the landlord's efforts to re rent the unit, it remained vacant for the month of January. The tenant did not file any evidence to support his claim that he was forced to move out for safety reasons. Therefore the tenant is responsible for rent for January and must pay the landlord \$1,130.00. The landlord has proven his case and is entitled to the recovery of the filing fee. Overall, the landlord has established a claim of 1,180.33.

I order that the landlord retain the security deposit of 545.00 and interest of \$4.78 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$630.22. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$630.22**.

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: September 08, 2010.
