



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for damage or loss under the Act, regulations or tenancy agreement; authority to retain the security deposit and recovery of the filing fee. The landlord provided two registered mail tracking numbers as proof of service of the landlord's application upon the tenants at the forwarding address provided by the tenants. The landlord testified that the landlord's evidence was posted on the tenants' door on October 11, 2010. I was satisfied the tenants had been served in accordance with the requirements of the Act and I proceeded to hear from the landlord without the tenants present.

At approximately 9:13 a.m. the male tenant appeared at the hearing. The male tenant confirmed receiving the landlord's application but denied receiving the landlord's evidence package. The evidence and the landlord's verbal testimony heard up until that time was summarized for the tenant. After that both parties were provided the opportunity to be heard and to respond to submissions of the other party.

Issues(s) to be Decided

1. Has the landlord established an entitlement to compensation from the tenants with respect to ending the fixed term tenancy early?
2. Is the landlord authorized to retain all or part of the tenants' security deposit?

Background and Evidence

I was provided undisputed evidence as follows. The parties entered into a fixed term tenancy that commenced November 15, 2009 and was set to expire August 31, 2010. At the expiration of the fixed term the tenants were required to vacate the rental unit. The tenants paid a \$448.00 security deposit and were required to pay rent of \$895.00 per month. The tenants gave the landlord a letter at the beginning of May 2010 informing the landlord they would be ending the tenancy as of May 31, 2010.

The landlord testified that the rental unit was advertised on-line immediately after receiving the tenants' notice to end tenancy at \$895.00 per month; however, after little interest at that rental rate the landlord reduced the advertised rent to \$825.00 per month. The landlord began advertising in the newspaper in mid-May 2010. The landlord claimed that the new tenants took possession June 15, 2010 and paid pro-rated rent for June 2010. The landlord is seeking to recover the following amounts from the tenants:

Loss of one-half of June's rent	\$ 448.00
Rent reduction for remainder of fixed term (\$70.00 x 3)	210.00
Advertising costs	<u>138.81</u>
Total claim	\$ 796.81

The tenant testified that the tenants could not locate the landlord's advertisements online and that the landlord did not take pictures of the rental unit for advertising purposes until mid-May 2010. Upon enquiry, the tenant could not confirm nor deny the landlord's assertion the new tenants took possession June 15, 2010. The landlord refuted the tenant's statements by confirming advertisements were online immediately after receiving the tenant's notice and explained that older photographs were initially used in those advertisements.

Both parties agreed that there were showings of the rental unit to prospective tenants during the last month of tenancy.

Provided as evidence by the landlord were copies of the tenancy agreement with the tenants, the tenancy agreement with the new tenants, condition inspection reports for this tenancy and the new tenancy, a newspaper advertising receipt, the tenants' notice to end tenancy and registered mail receipts.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act.

Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon review of the tenancy agreement I find that the tenants were contractually obligated to continue with the tenancy until its expiration date of August 31, 2010. By ending the tenancy earlier than that date the tenants violated the tenancy agreement. Therefore, the landlord may be entitled to recover losses incurred as a result of that violation.

As provided in part 4. of the test above, the landlord is obligated to take whatever reasonable steps are necessary to minimize any loss. I accept that the landlord acted

reasonably by reducing the monthly rent in order to avoid a vacancy. I find the landlord substantiated that the landlord entered into a new tenancy agreement at the rate of \$825.00 per month. Had the tenants not ended the tenancy early the landlord would have received rent of \$895.00 per month up to August 2010. I find the tenants' actions caused the landlord to incur a loss of \$70.00 per month for the remainder of the fixed term. Therefore, I grant the landlord's request to recover \$210.00 from the tenants.

Upon review of the new tenancy agreement and the move-in inspection report for the new tenants I note that both documents indicate that the new tenants took possession of the rental unit June 1, 2010. In the absence of any other documentary evidence to show the new tenants paid pro-rated rent for the month of June 2010 I find the landlord did not substantiate a loss of half of a month's rent for the month of June 2010. Therefore, I deny this portion of the landlord's claim.

With respect to advertising costs I note that the landlord began running advertisements in the newspaper starting May 14, 2010 at a cost of \$138.81. As the tenants were required to vacate the rental unit August 31, 2010 I find it likely that the landlord would have had to advertise to replace the tenants at the end of August 2010. However, had the tenants fulfilled the terms of the tenancy agreement and continued the tenancy until August 2010 the landlord would have had more time to advertise. I find it likely that the landlord had to make greater advertising efforts to mitigate the potential loss of rent in light of the tenants ending the tenancy early. Therefore, I award the advertising costs to the landlord in the amount of \$138.81.

Since the landlord has been partially successful with this application I award the landlord \$25.00 towards the filing fee paid for this application.

In light of the above findings, the landlord is authorized to deduct \$373.81 [\$210.00 + \$138.81 + \$25.00] from the security deposit and I order the landlord to return the balance of \$74.19 to the tenants forthwith. I provide the tenants a Monetary Order to serve upon the landlord to ensure payment is made.

Conclusion

The landlord was partially successful and has been authorized to deduct \$373.81 from the security deposit. The landlord is ordered to return the balance of \$74.19 to the tenants forthwith. The tenants have been provided a Monetary Order in the amount of \$74.19 to ensure payment is made.

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: October 28, 2010.

Dispute Resolution Officer