



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MND MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order allowing retention of the security deposit and pet damage deposit in partial satisfaction of the claim. The landlord has also requested recovery of the \$50.00 filing fee from the tenant. Both parties attended the hearing and had an opportunity to be heard.

Issues(s) to be Decided

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began on September 3, 2009 and was supposed to be for a fixed term of one year ending on August 31, 2010. The tenancy actually ended on June 30, 2010 when the tenant vacated the rental unit. The rent was \$1650.00 per month. A security deposit of \$825.00 and a pet damage deposit of \$825.00 were paid at the start of the tenancy. Condition inspection reports were completed upon move-in and move-out. The rental unit was not re-rented until September 2010.

Mr. A testified that the tenant failed to give one month's written notice to end the tenancy. Rather he claims that the tenant gave him verbal notice at the end of May and then at the end of June posted a letter on his door which purported to attach her earlier letter of termination dated May 26th. Mr. A testified that he had never seen the May 26th

letter before it was left on his door on June 28th. Mr. A did acknowledge that he knew that it was the tenant's intention to vacate the rental unit at the end of June and that she had agreed to undertake the showing of the unit to prospective tenants. In his written submission, the landlord states that he placed his first advertisement for the house on June 18, 2010 because some leads that the tenant had to rent the house did not work out.

For her part, Ms. C testified that she did give written notice to end the tenancy to the landlord at the end of May and she submitted a copy of the May 26th letter which provided in part as follows:

You are hereby given notice that the undersigned is terminating the 1 year lease tenancy, 2 months early as agreed in our conversation on May 26, 2010 by telephone...this termination is to be effective on June 30, 2010 without penalty to me in the form of additional rent or advertising expenses incurred by you.

Ms. C also submitted a copy of the other letter she delivered to the landlord dated June 27, 2010. This letter provided as follows:

Please find attached a copy of the tenancy termination letter I dropped off at your residence on May 29, 2010. It is my understanding that you do not have this currently in your possession. As agreed upon in our conversation on May 26th, 2010 the 1 year lease would be terminated 2 months early, ending on June 30, 2010 without penalty to me in the form of additional rent or advertising expenses incurred by you.

As from our conversation on June 25, 2010 you now seem to not be agreeable with the arrangement made previously, even though you have advertised the property available July 1st, 2010 and have shown the property to several potential tenants where I was there for all the viewings.

Therefore I do not understand why you are so unwilling to return my rent cheques and have indicated that you may hold back my deposit before even inspecting the property.

It is clear to me that you did agree with the early termination therefore I will be vacating the premises as agreed in the termination letter and have put a stop payment on the July and August 2010 rent cheques.

At the hearing and in his written submissions the landlord pointed to the language in the May 26th letter where the tenant says "as agreed in our conversation of May 26th" as

supporting his contention that this letter had not been written on May 26th but rather on some later date because one normally would have written “as agreed in our conversation of today’s date” or “this morning”.

Analysis

The landlord’s Application for Dispute Resolution indicates that the landlord seeks a monetary order in the amount of \$3,300.00 which is equal to the income he lost for the months of July and August when he did not have any tenants in the unit. In the box labelled Details of Dispute the landlord then wrote “cost of repairs, advertising, paint and carpet +\$1,000.” At the hearing however, the landlord stated that he was no longer seeking recovery of cost of painting or repairs because the new tenants were going to do it themselves. It was not clear from the landlord’s submissions whether he was still seeking to recover the cost of advertising but in any event the landlord is limited to his claim of \$3,300.00 for lost rent because that is what is stated on his application. I therefore turn to an analysis of the landlord’s claim for lost income.

The addendum to the tenancy agreement provides that *“if the tenants move out prior to the expiry date of the tenancy agreement, then they will be liable for the cost of advertising as well as the monthly rent until the house is re-rented to another tenant...”*.

In the present case, the tenant did move out prior to the end of the term of the agreement but the tenant claims that the landlord had agreed to waive any advertising costs or additional rent after the month of June.

At the end of the day, this case involves a written fixed term tenancy agreement of one year. The tenant decided that she wished to end the tenancy two months before the end of the term but did not wish to be held liable for rent for the remaining two months of the term. The landlord essentially told her that he accepted her wish to move and that he would do his best to re-rent the unit but he denies having ever said that she would not be liable for the rent if he was unsuccessful. In his written statement the landlord

says he told her he would not return her post-dated cheques for July and August until he rented the house again and had received her written notice to end tenancy.

In my view, regardless of whether the tenant had given written notice in a timely manner, the tenant still remained liable for the remainder of the term of the lease subject only to the landlord's duty to mitigate his loss by making reasonable efforts to re-rent the unit.

I am satisfied based on all the evidence before me that the landlord did, in fact, take all reasonable steps to mitigate his loss of income in the face of the tenant's early notice and I am therefore satisfied that the landlord has established a claim for lost income for the months of July and August.

Conclusion

Based on all of the foregoing, I find that the landlord has established a total monetary claim of \$3,350.00 comprised of \$1,650.00 in lost income for July, \$1,650.00 in lost income for August and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit and interest of \$1,650.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,700.00. 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*.