



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for an order for monetary compensation under the Act or tenancy agreement, to keep all or part of the security deposit, and to recover the filing fee for the Application.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the Landlord entitled to the monetary compensation sought?

Background and Evidence

The evidence supports that the Tenants moved into the dispute address on January 1, 2010, and the tenancy ended on or about September 30, 2010. The monthly rent was \$849.00 and a security deposit of \$539.00 was paid on May 21, 2009.

The Landlord's evidence was a tenancy agreement and 2 notices dated September 4, 2010, of the Tenants intent to vacate the rental unit on September 30, 2010.

The Landlord's Agent testified that the notice to vacate was late and therefore the Landlord is entitled to the rent for the month of October.

I heard testimony from the Landlord's Agent that the Landlord immediately advertised the rental unit for availability for October 1, 2010, using their usual methods of advertising. The Landlord's Agent testified that there was at least one showing while the Tenants were in the rental unit.

Upon query, the Landlord's Agent explained that he did not have complete records due to a transition in the Landlord's office and therefore was not able to testify as to when the rental unit was rented again, including for the month of October 2010, or when the advertisements ran.

The Tenant testified that he believed the Tenants were entitled to end the lease early due to a clause in the tenancy agreement, and he further testified that he has previously received a cheque for the balance of the security deposit from the Landlord in the amount of \$155.59.

Upon query, the Tenant was not clear why the Tenants received the cheque and that the statement said it was for a revenue loss.

I note the Landlord's Agent did not have knowledge of the refund.

Analysis

Based on the above testimony and evidence, and on a balance of probabilities, I find as follows:

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence **relevant** to the issues and findings in this matter are described in this Decision.

In a claim for damage or loss under the Act or tenancy agreement, the claiming party has to prove four different elements:

First, proof that the damage or loss exists, **secondly**, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, **thirdly**, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and **lastly**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed. In this case, the onus is on the Landlord to prove damage or loss.

In the absence of proof by the Landlord that the rental unit remained vacant during all or part of October, and thereby incurring a loss, or to verify that the Landlord advertised the rental unit, I find that the Landlord submitted insufficient evidence to prove steps 2 and 4 in the test for damage and loss. I therefore **dismiss** the entire claim of the Landlord.

I also find that there was not enough evidence to determine the issue of the security deposit balance, which is held in trust for the Tenants; therefore the Tenants are at liberty to make application for a return of their remaining security deposit.

Conclusion

The Landlord's application is dismissed.

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: February 10, 2011.

Residential Tenancy Branch