



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with the Landlord's Application for Dispute Resolution for an order for unpaid rent, 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 month to month tenancy started on August 1, 2010, ended on November 1, 2010, rent was \$1,050.00 and a security deposit of \$525.00 was paid on August 1, 2010.

The Landlord claims lost rent for the month of November of \$1,050.00 and to retain the security deposit.

In support of the claim, the Landlord's Agent testified that he informed the Tenants on or about October 6, 2010, that the Tenants' dog would have to be removed from the premises due to the strata violation. The Landlord's Agent stated that on October 24, 2010, he received a phone call from the Tenants informing him that they would vacate the premises at the end of the month.

I note the tenancy agreement does not prohibit the Tenants from having pets.

The Landlord's Agent stated that he lost rent for November because of the lack of a proper written notice.

Upon query, the Landlord's Agent could not verify the date the rental unit was again marketed for re-rent nor did he provide documentary proof that the rental unit had been advertised.

In response, the female Tenant submitted that the Landlord knew the Tenants had a pet prior to moving in and that that the Agent should have known of the strata rules. The Tenants stated that they vacated the rental unit due to the Landlord's eviction notice and that the Landlord's Agent knew all during the month of October that they would be moving out. I heard testimony from the female Tenant that the Landlord offered to help them find a place to move and assisted in the move.

The female Tenant submitted that their forwarding address was provided to the Landlord at the move out inspection.

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, the Landlord in this case, 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.

As to the Landlord's claim for lost rent for November 2010, in the absence of documentary proof and testimony of a specific date when the rental unit was advertised, I find the Landlord did not submit proof that they took the necessary steps to mitigate their claimed loss by advertising and marketing of the rental unit. Therefore I **dismiss** their claim for **\$1,050.00** for the November 2010 rent.

As the Landlord was not successful with their application, I find they are not entitled to recover the filing fee.

For the reasons cited above, I dismiss the Landlord's Application in its entirety, without leave to reapply.

I find that the Landlord complied with section 38 (1) (a) of the Residential Tenancy Act and the Tenants are not entitled to double their security deposit. However, as I have dismissed the Landlord's application, I **direct** that the Landlord return to the Tenants the security deposit of **\$525.00**.

I **grant** the Tenants an order under section 67 for the amount of **\$525.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Landlord's Application is dismissed.

The Tenants are granted a monetary order for the return of their security deposit in the amount of \$525.00.

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: March 22, 2011.

Residential Tenancy Branch