



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement and to recover the cost of the filing fee from the Tenant for this application.

Service of the hearing documents, by the Landlord to the Tenant, was done in accordance with section 89 of the Act, sent via registered mail November 6, 2010. Mail receipt numbers were provided in the Landlord's verbal testimony. The Tenant is deemed to have been served the hearing documents on November 11, 2010, five days after they were mailed in accordance with section 90 of the Act.

The Landlord appeared at the teleconference hearing, gave affirmed testimony, was provided the opportunity to present her evidence orally, in writing, and in documentary form.

Issue(s) to be Decided

1. Has the Tenant breached the *Residential Tenancy Act*, regulation or tenancy agreement?
2. If so, has the Landlord met the burden of proof to obtain a Monetary Order as a result of that breach?

Background and Evidence

The Landlord testified she entered into a month to month tenancy agreement with the Tenant effective August 1, 2009, however the Tenant moved in on July 27, 2009. Rent was payable on the first of each month in the amount of \$800.00 and on or before July 27, 2009 the Tenant paid \$400.00 as the security deposit.

The parties signed a mutual agreement to end the tenancy on August 21, 2009 to end the tenancy effective August 31, 2009. The Tenant did not vacate the property until September 5, 2009.

The Landlord is seeking \$1,200.00 compensation which is comprised of \$800.00 for loss of rent for September plus \$400.00 for the security deposit she had to return to the tenant she had lined up to occupy the unit as of September 1, 2010. The Landlord stated she could not remember how she found a new tenant so quickly but suspected she advertised the unit on the internet as soon as the mutual agreement was signed.

The Landlord confirmed she entered into a written tenancy agreement with this new tenant however she did not provide a copy of this new agreement into evidence, she could not provide testimony as to the date this new agreement was signed, and could not provide the name of the alleged new tenant. She did not rent the unit until October 15, 2010 so she lost \$1,200.00 of rental income which she totalled from \$800.00 rent and \$400.00 security deposit she had to return to the alleged new tenant.

Analysis

Section 7(1) of the Act provides that if a landlord or tenant does not comply with this Act, the Regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for the damage or loss which results. That being said, section 7(2) also requires that the party making the claim for compensation for damage or loss which results from the other's non-compliance, must do whatever is reasonable to minimize the damage or loss.

The party applying for compensation has the burden to prove their claim and in order to prove their claim the applicant must provide sufficient evidence to establish the following:

1. That the Respondent violated the Act, Regulation, or tenancy agreement; and
2. The violation resulted in damage or loss to the Applicant; and
3. Verification of the actual amount required to compensate for loss or to rectify the damage; and
4. The Applicant did whatever was reasonable to minimize the damage or loss

Section 44 of the *Residential Tenancy Act* sets out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to this provision, however if a tenant remains in possession of the premises (over holds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord

recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

In this case the evidence supports the tenancy ended August 31, 2010 and the Tenant occupied the unit until September 5, 2010. Therefore, I find the Landlord has met the burden of proof to obtain monetary compensation for the 5 days the Tenant over held the unit in the amount of **\$131.50** (5 days x \$26.30 per day).

The Landlord has sought \$1,200.00 for loss of rent as she lost a potential renter for September 1, 2010. The Landlord was not able to provide testimony pertaining to the alleged new tenancy that was to take effect September 1, 2010. When considering the mutual agreement to end tenancy was only signed August 21, 2009, I find, on a balance of probabilities, that it was unlikely in this rental market that the Landlord was able to security a new tenant for the following week. That being said, I find there to be insufficient evidence to support the Tenant's actions of overholding caused the Landlord to lose a tenant for September 1, 2010. Having considered this tenancy ended by mutual agreement, I find there to be insufficient evidence to support the Landlord's claim of \$1,200.00, and it is hereby dismissed without leave to reapply.

The Landlord has been partially successful with her application; therefore I award her partial recovery of the filing fee in the amount of **\$25.00**.

I find that the Landlord is entitled to a monetary claim and this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit as follows:

Over Holding occupation of rental unit	\$131.50
Filing fee	25.00
TOTAL AMOUNT DUE TO THE LANDLORD	\$156.50

The Landlord may withhold the \$156.50 from the Tenant's security deposit. The balance of the security deposit in the amount of \$243.50 must be disbursed in accordance with Section 38 of the *Act*.

Conclusion

The Landlord is HEREBY entitled to retain the onetime award of **\$156.50** from the Tenant's security deposit.

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 15, 2011.

Residential Tenancy Branch