



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for money owed or compensation for damage or loss; to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing.

The Landlord submitted a copy of the tenancy agreement to the Residential Tenancy Branch. The agent for the Landlord stated that a copy of the tenancy agreement was not served to the Tenant as the Landlord believed he was in possession of a copy of that evidence. As the tenancy agreement was not served on the Tenant in accordance with the Residential Tenancy Branch Rules of Procedure and the Agent for the Tenant did not have a copy of that agreement in her possession, the agreement was not accepted as evidence in these proceedings.

The Agent for the Landlord requested leave to withdraw the Application for Dispute Resolution with leave to reapply once the Tenant had been served a copy of the tenancy agreement in accordance with the Residential Tenancy Branch Rules of Procedure.

The Agent for the Tenant opposed the Landlord's request to withdraw the application on the basis that the dispute resolution documents provided to the Landlord by the Residential Tenancy Branch clearly advise the parties that they must serve the respondent with copies of their evidence. The Agent for the Tenant argued the Landlord has been in possession of the security deposit since the tenancy ended in November of 2010, that the security deposit is a significant amount of money, and that a further delay would prejudice the Tenant as he would not have access to his money for at least another month. I concur with the concerns raised by the Agent for the Tenant and the Landlord's request to withdraw the Application for Dispute Resolution was denied.

The Agent for the Landlord and the Agent for the Tenant were provided with the opportunity to give affirmed testimony, to ask relevant questions, and to make relevant submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to retain the Tenant's security deposit and key fob deposit in compensation for loss of revenue and in compensation for the cost of filing fee for this Application for Dispute Resolution from the Tenant, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The Agent for the Landlord and the Agent for the Tenant agree that the Tenant entered into a one year fixed term tenancy agreement that began on March 01, 2010 and that the tenancy could continue on a month-to-month basis at the end of one year. The parties agree that the tenancy agreement required the Tenant to pay monthly rent of \$1,200.00 on the first day of each month.

The Agent for the Landlord and the Agent for the Tenant agree that the Tenant paid a security deposit of \$600.00 and a key fob deposit of \$50.00; that the key fob was returned at the end of the tenancy; and that neither deposit has been returned to the Tenant.

The Agent for the Landlord and the Agent for the Tenant agree that in September of 2010 the Agent for the Tenant gave the Landlord written notice, via email, of the Tenant's intent to end the tenancy on December 01, 2010. The Agent for the Tenant stated that the rental unit was vacated by November 21, 2010, which is not disputed by the Landlord.

The Landlord is seeking compensation, in the amount of \$600.00, for loss of revenue the Landlord experienced in December of 2010. The Agent for the Landlord stated that the rental unit was advertised on a popular website sometime during the last week of October; that the Landlord typically updates the Craigslist advertisements every three days; that there were several vacancies in this residential complex in December of 2010; that there is a vacancy sign outside the residential complex that indicates there are rental units available; that the vacancy sign has a legible phone number for the Landlord; and that the rental unit was not re-rented until February of 2011.

The Agent for the Tenant advised that on November 01, 2010 an agent for the Landlord informed her that the rental unit had been advertised; that the Tenant regularly checked Craigslist and the Landlord's advertisement was not updated on a daily basis; that the sign in front of the residential complex does not list whether there is a one bedroom or two bedroom unit available; and that the phone number on the sign is not clearly legible.

The Agent for the Tenant argued that the residential complex is not well maintained, which may have contributed to the landlord's inability to find a new tenant. In support of this claim the Agent for the Tenant argued that the light above her parking space did not work for during this tenancy.

Analysis

On the basis of the undisputed testimony presented at the hearing, I find that the Tenant entered into a tenancy agreement with the Landlord that required the Tenant to pay monthly rent of \$1,200.00 on the first day of each month; that this was a fixed term tenancy that began on March 01, 2010 and was to continue until at least February 28, 2011; and that the Tenant paid a security deposit of \$600.00 and a key fob deposit of \$50.00.

I find that this tenancy ended on November 30, 2010 and that the Tenant gave more than two month's written notice of his intent to vacate the rental unit.

When making a claim for damages under a tenancy agreement or the *Act*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that a damage or loss occurred; that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I find that the Tenant did not comply with section 45(2) of the *Act* when he ended this fixed term tenancy on a date that was earlier than the end date specified in the tenancy agreement. I therefore find that the Tenant must compensate the Landlord for any losses the Landlord experienced as a result of the Tenant's non-compliance with the *Act*, pursuant to section 67 of the *Act*. In the absence of evidence to the contrary, I find that the Landlord experienced a loss of revenue in the month of December of 2011, in the amount of \$1,200.00, that the Landlord would not have experienced if the tenancy had continued until the end of the fixed term. I note that the Landlord is only seeking compensation of \$600.00.

I find that by advertising on a popular website and on a sign in front of the residential complex, the Landlord took reasonable steps to mitigate the loss of revenue it experienced. The *Act* does not require the Landlord to take every possible measure to mitigate their loss. The *Act* only requires the Landlord to take reasonable steps. I find that posting a vacancy sign in front of the residential complex and updating an ad on Craigslist at reasonable intervals, such as once per week, constitutes a reasonable effort.

In these circumstances, I find that the Tenant must pay \$600.00 to the Landlord in partial compensation for the loss of revenue that the Landlord experienced in December of 2010.

In reaching this conclusion I placed no weight on the Agent for the Tenant's arguments that the maintenance level in the building contributed to the Landlord's loss of revenue. Given that the Tenant elected to move into the rental unit in March of 2010 and the Landlord was able to re-rent the unit in February of 2011, I find that maintenance issues did not significantly impair the Landlord's ability to rent this unit.

I find that the Landlord's application has merit, and I find that the Landlord is entitled to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Conclusion

I find that the Landlord has established a monetary claim, in the amount of \$650.00, which is comprised of \$600.00 for loss of revenue and \$50.00 for the filing fee paid by the Landlord for this Application for Dispute Resolution.

I hereby authorize the Landlord to retain the security deposit of \$600.00 and the \$50.00 key fob deposit in full satisfaction of the monetary claim.

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: April 26, 2011.

Residential Tenancy Branch