



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order to retain the security deposit - Section 38;
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on November 1, 2009 and ended on February 28, 2011. Rent in the amount of \$1,275.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$650.00.

On February 1, 2011, the Tenants provided written notice to end the tenancy on February 28, 2011. The Landlord states that he was unable to rent the premises out until a couple of months later but that he is only claiming the amount of the security deposit as lost rental income for the month of March 2011. The Landlord states that he took no steps to rent the unit until the end of February 2011 because February was not a good time of the year to find new renters. The Tenants state and the Landlord disputes that one of the Tenants orally informed the Landlord prior to the end of January

2011 that they would be ending the tenancy. The Tenants also state that being one day late with the written notice should not justify the Landlord's claim to lost rental income.

Analysis

Section 45 of the Act provides that a tenant may end a tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable. By giving the Landlord notice on February 1, 2011, I find that the Tenants did not comply with the Act to provide the required time for the notice.

Section 7 of the Act provides that where a tenant does not comply with the act, the tenant must compensate the Landlord for loss that results from the non-compliance. Where a landlord claims such a loss, this section further requires the landlord to do whatever is reasonable to minimize this loss. The Landlord claims a loss of rental income for the month of March 2011 as a result of the Tenants non-compliance with the Act however the Landlord took no steps to mitigate this loss until the end of February 2011. By not looking for new renters until the end of February 2011, I find that the Landlord did not act reasonably to minimize his loss for March 2011. Accordingly, I dismiss the Landlord's claim to lost rental income and to retain the security deposit against that loss. I direct the Landlord to return the security deposit and interest payable to the Tenants forthwith and I provide a monetary order to the Tenants for the amount of \$650.00, representing the amount of the security deposit and interest payable to be returned to them. As the Landlord's claim has failed, I make no award for recovery of the filing fee.

Conclusion

I grant the Tenants a Monetary Order under Section 67 of the Act for the amount of **\$650.00**. If necessary, 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*.

Dated: June 20, 2011.

Residential Tenancy Branch