



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with the Landlords' Application for Dispute Resolution for a monetary order for unpaid rent, an order 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 make submissions to me.

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.

Issue(s) to be Decided

Has the Tenant breached the *Residential Tenancy Act* (the "Act") or tenancy agreement, entitling the Landlord to an Order for monetary relief?

Background and Evidence

I heard testimony that this month to month tenancy began on February 1, 2011, ended on February 28, 2011, monthly rent was \$565.00 and the Tenant paid a security deposit of \$282.50 in January 2011.

The Landlord is claiming the amount of \$847.500, for loss of rent for March 2011, due to insufficient notice and in addition, to keep the Tenant's security deposit.

In support of their application, I heard testimony from the Landlord that the Tenant moved into the rental unit on February 1, 2011, and gave his notice to end the tenancy on that day, effective for February 28, 2011.

The Landlord submitted evidence and testified that the rental unit was immediately placed back on the market, but that a suitable tenant was not secured until April 1, 2011. The evidence included copies of the newspaper billing for the advertisements.

In response, the Tenant submitted that he was not allowed to view the rental unit until the day he moved in, upon which he discovered that there was no common area for the tenants sharing the home. The Tenant said this was not acceptable and not as he was promised and that had he known a week earlier when he attempted to view the rental unit that there was no common area, he would have turned in his notice to end the tenancy at that time.

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

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.

Section 45 (1) of the Residential Tenancy Act requires a tenant to give notice to end the tenancy 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 under the tenancy agreement.

Therefore I find that the Tenant submitted insufficient notice to end the tenancy by not giving one clear month's notice and is liable to the Landlord for rent for the month of March 2011. I find that the Landlord took steps to mitigate the loss by immediately advertising the rental unit back for rent.

The Landlord had no clear explanation as to why they believed they were entitled to retain the security deposit in addition to the claim for lost rent and did not establish any loss or damage beyond the March 2011, rent.

I therefore find that the Landlord has established a **monetary claim of \$615.00**, comprised of loss of rent for March 2011, in the amount of \$565.00, and the filing fee of \$50.00.

Conclusion

I **order** that the Landlord retain the security deposit of \$282.50 in partial satisfaction of the claim and I **grant** the Landlord an order under section 67 for the balance due of **\$332.50**.

This order is a final, legally binding order, and may be filed in the Provincial Court (Small Claims) should enforcement become necessary.

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 27, 2011.

Residential Tenancy Branch