



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, O, FF
 MNSD, FF

Introduction

This hearing dealt with cross applications by the landlord and tenant. The application by the landlord is to keep all or part of the security deposit, money owed or compensation for damage or loss, other and recovery of the filing fee. The application by the tenant is for return of the security deposit and recovery of the filing fee. Both parties participated in the conference call hearing.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This 1 year fixed term tenancy began September 1, 2010 with monthly rent of \$1300.00 and the tenant paid a security deposit of \$650.00. The tenant vacated the rental unit February 28, 2011.

The landlord testified that the tenant did not give proper notice prior to vacating the rental unit and that he was unable to re-rent the unit until July 1, 2011. As the unit remained empty for 4 months the landlord suffered a loss of \$5200.00 in rental income. The landlord stated that he advertised the property on Craigslist, placed a notice in the building laundry room and let various friends and business associates know that he had an apartment for rent. The landlord stated that he placed the first rental ad on Craigslist sometime around March 16, 2011.

The tenant testified that when he advised the landlord he would be vacating the rental unit the landlord told him that it was OK because he would be renovating the unit once the tenant vacated. The tenant referred to a letter from the Strata about a leak from the bathroom into the lower unit and the landlord responded that he did not know what the tenant was talking about. The tenant stated that there is an addendum to the tenancy

agreement that states with 2 months notice the fixed term tenancy may be terminated however the tenant acknowledges that he gave the landlord one and one half months notice and not two months notice.

The tenant stated that he still resides on the same floor and that after vacating the rental unit he saw contractors going into the unit to complete renovation work. The landlord confirmed that he had a contractor come in to repair the tile and shower door in the bathroom but that this work only took a few days and that this was the only renovation work done in the unit.

The tenant stated that during the tenancy the bathroom door lock stopped working and that the landlord told him to go ahead and fix it himself. The tenant bought a new locking door handle for the bathroom which worked fine up until a few days before they vacated. The tenant stated that his son got locked out of the bathroom and in the morning he called a locksmith to come unlock the bathroom door. The tenant in this application is seeking compensation of \$33.97 for the new lock and \$72.90 for the cost of the locksmith. The tenant is also seeking return of the security deposit. The landlord commented that he had not paid the tenant for these expenses as he was waiting until the outcome of this hearing.

The landlord in this application is seeking \$5000.00 compensation for loss of rent due to the fixed term tenancy being broken.

Analysis

Based on the documentary evidence and testimony I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for loss of rental income.

Residential Tenancy Policy Guideline **5. speaks to the “Duty to Minimize Loss,” and provides in part as follows:**

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

The landlord stated that he took steps to re-rent the unit on March 16, 2011 at which time he placed a rental ad on Craigslist. The landlord offered no testimony or evidence as to why he did not start advertising the rental unit in mid January after the tenant provided his notice which points to the tenant's testimony that the landlord told him he would be renovating the unit when the tenant vacated and that is partially why the unit remained unrented for some time.

Had the tenant provided proper notice to the landlord the end of tenancy date would have effectively been March 31, 2011. I am not satisfied that the landlord took reasonable steps to mitigate his loss and must consider the fact that the landlord left the rental unit empty for some time to complete renovation work. Therefore I find that the landlord has established entitlement to compensation in the limited amount of \$1300.00.

I find that the landlord has established a claim of \$1300.00 for loss of rental income.

The tenant, at the direction of the landlord repaired the bathroom door lock and subsequently had the lock checked by a locksmith. As the tenant proceeded with these repairs at the direction of the landlord I find that the tenant is entitled to \$106.87 compensation for these costs.

As the landlord has been successful in their application for compensation due to loss, the tenant is not entitled to return of the security deposit and this portion of the tenant's application is hereby dismissed without leave to reapply.

I find that the tenant has established a claim for \$106.87 in repair costs.

As both parties have had some success in their applications neither is entitled to recovery of the \$50.00 filing fee as these amounts offset each other.

The landlord's claim of \$1300.00 will be offset by the tenant's claim of \$106.87 resulting in a balance of \$1193.13 owed to the landlord.

Conclusion

I find that the landlord has established a monetary claim for \$1300.00 for loss of rental income. The landlord's claim of \$1300.00 will be offset by the tenant's claim of \$106.87 resulting in a balance of \$1193.13 owed to the landlord. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$650.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$543.13**

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: July 21, 2011.

Residential Tenancy Branch