

DECISION

Dispute Codes:

MNR; MNSD; FF

Introduction

This is the Landlord's application for a Monetary Order for loss of revenue, to retain the security deposit in satisfaction of her monetary award; and to recover the cost of the filing fee from the Tenant.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary award for loss of revenue for the month of December, 2010?

Background and Evidence

The Landlord gave the following testimony:

The parties entered into a one year term lease agreement on October 7, 2010. A copy of the tenancy agreement was provided in evidence. Monthly rent was \$1,850.00 due on the first day of each month. The Tenant paid a pet damage deposit and a security deposit, totalling \$1,850.00, at the beginning of the tenancy. The Tenant provided post-dated cheques for rent to the Landlord.

The Tenant ended the tenancy on November 1, 2010, without due notice. Rent for the month of November was paid. The Tenant placed a "stop payment" on her December, 2010, rent cheque. The Landlord began advertising the rental unit on November 1, 2010, on an online site and in the local newspaper. A copy of the invoice from the local newspaper was provided in evidence. The Landlord does not seek to recover the cost

of the newspaper ad from the Tenant. The Landlord withdrew her application for recovery of the cost of the filing fee from the Tenant.

The rental unit was re-rented effective January 1, 2011, at \$1,850.00 per month. The Landlord seeks a monetary award for loss of revenue for the month of December, 2010.

The Tenant gave the following testimony:

The Tenant concurred with the Landlord's agent's testimony. She stated that she had no choice but to end the tenancy because the windows were painted shut and there was an inadequate hot water supply in the bathroom. In addition, the temperature controls for the rental unit were located in another suite.

The Tenant wrote to the Landlord on November 1, 2010, advising that she would be returning the keys immediately and vacating the rental unit. She stated that she had spoken to the Landlord in late October about the problems with the windows, hot water and temperature controls, but the Landlord refused to correct the problems. She stated that she had been advised that sealed windows did not meet the health, safety and housing standards and that she could end the tenancy.

Analysis

Section 45 of the Residential Tenancy Act provides the means by which a Tenant can end a tenancy. Section 45 states:

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

In this case, the tenancy is a fixed term tenancy. The Tenant could not end the tenancy (unless by mutual agreement with the Landlord) until the end of the term in accordance with the provisions of Section 45(2), or by complying with Section 45(3) of the Act. The Tenant did not provide the Landlord with **written notice** of failure to comply with a material term of the tenancy until the day that she ended the tenancy and therefore did not provide a reasonable period for the Landlord to address her concerns.

Based on the testimony of both parties, the Landlord has established a monetary claim for loss of revenue for the month of December, 2010, in the total amount of \$1,850.00.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security and pet damage deposit in full satisfaction of her monetary claim.

The Landlord's application to recover the cost of the filing fee from the Tenant is dismissed as withdrawn.

The Landlord is hereby ordered to return any of the Tenant's post dated cheques that may be in her possession.

Conclusion

The Landlord's application to recover the cost of the filing fee from the Tenant is dismissed as withdrawn.

The Landlord is hereby ordered to return any of the Tenant's post dated cheques that may remain in her possession.

The Landlord has established a monetary award for loss of revenue in the amount of **\$1,850.00**. Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may apply the security and pet damage deposit in full satisfaction of her 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: July 04, 2011.

Residential Tenancy Branch