



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, 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. A Monetary Order for loss or damage - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each 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?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on August 15, 2010 and ended on April 30, 2011. Rent in the amount of \$895.00 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 \$447.50.

The Landlord states and the Tenant agrees that prior to entering the tenancy, the Landlord advised the Tenant that the tenancy was only available on a one year term and that if the Tenant was not prepared to enter into a one year term that the Tenant would have to seek another tenancy. The Landlord states that the Tenant verbally agreed to rent the unit until August 30, 2011 and that upon request from the landlord the

Tenant confirmed this agreement in writing. The Tenant sent a letter dated August 5, 2010 to the Landlord in which the Tenant states "I look forward to renting the suite from September 1st, 2010 – August 31st, 2011. Both parties agree that nothing was discussed in relation to whether the Tenant would be required to move-out on August 31, 2011 or whether the tenancy would become a month to month tenancy. The Landlord states that the Tenant broke the lease agreement by leaving before the end of the agreed date and claims a loss of rental income

The Tenant states that the agreement to lease the unit for one year was based on the Tenant's attendance at an educational program that lasted for the same period of time. The Tenant states that in November 2010, the Landlord was informed by the Tenant that the Tenant would be leaving the educational program, which the Tenant states did occur in November 2011. The Tenant states that she remained in the unit until April 2011 because her plans were uncertain but that part of her consideration to stay at the unit was that she has agreed to stay for a length of time and would allow the Landlord to benefit from her remaining in the tenancy for as long as was reasonable but that she was not obliged to consider the financial expectations of the Landlord.

The Tenant states that she was informed by four separate Information Officers of the Residential Tenancy Branch an oral lease agreement can only be made on a month to month basis and for this reason, the Tenant claims that the Landlord has no right to pursue lost rental income as she provided more than one month's notice to vacate the premises. The Parties agree that the Tenant informed the Landlord by email on March 8, 2011 that Tenant would be vacating the unit by April 30, 2011. The Tenant submitted as evidence an email from the Landlord on that same date indicating appreciation for the "good amount of notice" and that the Landlord would be advertising soon and that the Tenant could expect showings over the next two months.

The Landlord states that the unit was advertised starting April 30, 2011 and that while the Landlord received between 25 to 30 responses to the advertisements, there were only 4 or 5 showings and that the unit was rented for August 1, 2011. The Tenant

provided a letter from a friend that states that the Landlord informed the friend at the Tenant's move-out that the Landlord had no intention to seek a new tenant until after their baby arrived in September 2011. The Landlord denies making this statement and states that the friend misrepresented what he said. The Landlord states that finding new tenants is difficult during the summer months. The Landlord claims lost rental income for May, June and July 2011.

Analysis

Given the statements of the Tenant that she intended to lease the unit until August 31 and given that the Tenant remained in the unit several months longer after the educational program ended, I find that by words and action, the Tenant has confirmed that the Parties entered into an oral agreement for a one year term tenancy despite the length of the educational program. I find therefore that the Tenant is liable to the Landlord for lost rental income associated with the Tenant's early end of the lease. The Tenant's position that an oral agreement can only be equivalent to a month to month agreement was supported only by the Tenant's assertion that this was the information she received from an Information Officer of the Residential Tenancy Branch. Without knowing the information provided to the Officer by the Tenant that led to the provision of information from the Officer, I find this type of third party information carries no weight.

Section 7(2) of the *Act* states in part that a landlord who claims compensation for damage must do whatever is reasonable to minimize the damage or loss. As the Landlord was given notice on March 8, 2011 but did not advertise the unit until April 30, 2011, I find that the Landlord failed to advertise the unit as early as reasonably could have been done in order to reduce the loss. I also accept however that the rental market was slow for the Landlord and accordingly I find that the Landlord is entitled to a reduced loss of one and one half month's rent or \$1,342.50. The Landlord is also entitled to recovery of the filing fee in the amount of \$50.00 for a total monetary entitlement of **\$1,392.50**.

The **security deposit** will be off-set from the award made herein.

Calculation for Monetary Order

Loss of rental income	\$1,342.50
Filing Fees for the cost of this application	50.00
Less Security Deposit and interest <i>to date</i>	-447.50
Total Monetary Award	\$945.00

Conclusion

I order that the Landlord retain the **deposit** and interest of \$447.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$945.00**. 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: August 16, 2011.

Residential Tenancy Branch