



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; and
2. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

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

Issue(s) to be Decided

Is the Landlord entitled to retain all or part of the security deposit?

Background and Evidence

The tenancy began on December 18, 2007 and ended on April 30, 2011. Rent in the amount of \$1,240.00 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 \$620.00. The Landlord states that the Tenants failed to provide a full months notice to end the tenancy having given the notice to the Landlord on April 3, 2011. The Landlord started to advertise the unit on April 5, 2011 however the rental amount for the unit was advertised at \$1,310.00. The Landlord failed to find a new tenant for May 2011 and commenced upgrades to the unit in mid May 2011. The Landlord reduced the

rental amount back to \$1,240.00 in August 2011 and was able to rent the unit by August 15, 2011. The Landlord claims the amount of \$620.00 as lost rental income and currently holds this amount as the Tenants' security deposit.

Analysis

Where a Tenant wishes to end a month to month tenancy, the Act provides as follows:

- 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.

In a claim for damage or loss under the Act, the party claiming costs for the damage or loss must prove that the damage or loss claimed was caused by the actions or neglect of the responding party. Further, section 7 of the Act provides that where a landlord claims compensation for loss that results from the tenant's non compliance with the Act, the Landlord must do whatever is reasonable to minimize the loss.

The Tenants failed to provide a full month's notice to end the tenancy. The Tenants were 3 days short of that notice requirement. Although the Landlord advertised the unit immediately, the rent for the unit was increased for that advertisement. Further, at this rental price, the Landlord was unable to rent the unit for a few months. As the Landlord was able to rent the unit as soon as the rental price was reduced, I find that the Landlord has not substantiated on a balance of probabilities that a loss of rental income arose from the Tenants' notice that fell short of three days. Even if the Landlord were able to substantiate that the loss of rental income arose from the Tenants' act, I also find that the Landlord failed to take reasonable steps to mitigate such loss by seeking a higher rental amount for the unit. Accordingly, I dismiss the Landlord's application and order the Landlord to return the security deposit plus interest in the amount of **\$629.66** to the Tenants forthwith.

Conclusion

The Landlord's application is dismissed. I Order the Landlord to return the security deposit plus interest in the amount of **\$629.66** to the Tenants forthwith.

I grant the Tenant an order under Section 67 of the Act for the amount of **\$629.66**. 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 18, 2011.

Residential Tenancy Branch