



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for unpaid rent; to keep the security deposit; and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a condominium in a multi-unit complex. Pursuant to a written agreement, the fixed term tenancy was based on a one year lease, starting on September 1st, 2010 and ending August 31st, 2011. The rent is \$1450.00 per month and the tenant paid a security deposit in the amount of \$725.00.

The landlord testified that in March 2011, the tenant approached her by email to request an early end to the tenancy because she could no longer bear the noise from the trains. The landlord said that although she was out of the country, she agreed to allow the tenant out of the lease provided that the tenant could find new suitable occupants under a new tenancy agreement, where the rent would be \$1800.00 per month. The landlord said that the tenant referred a prospect to her; however the landlord declined because that prospect's references could not be verified and was only willing to pay \$1500.00. The landlord stated that she then further suggested to the tenant to stay until the end of June, and that upon her return she would then move into the unit to do some

renovations. The landlord said that the tenant agreed to those terms, that she said that she would be moving out early but would pay rent to the end of June. The landlord said that on April 12th, 2011, the tenant emailed her that she left the unit and that she had also returned the keys. The landlord said that the tenant did not pay rent for May and June 2011, that the tenant stopped responding to her emails, and that she had no further contact with the tenant. The landlord said that she returned at the end of June; she said that she paid \$8.00 at the court registry to obtain the tenant's forwarding address; and that she changed plans and found new tenants starting August 1st, 2011 at \$1700.00 per month.

The landlord's monetary claim is for unpaid rent for May and June 2011 for the sum of \$2900.00, \$8.00 for the court fees, and the filing fee for her application for a claim totalling \$2958.00.

The tenant testified that she gave the landlord notice to end the tenancy on March 8th, 2011 because the noise became unbearable. She argued that the prospective tenant that she found was highly qualified, and that every other prospective tenant told her that the rent of \$1800.00 was too high. Concerning the loss of communication with the landlord, the tenant said that her new computer crashed.

Analysis

Section 45(2) of the *Residential Tenancy Act* states in part that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than the date specified in the tenancy agreement as the end of the tenancy. Nevertheless, on the evidence I accept that the landlord agreed to release the tenant from that obligation. I also accept that the landlord's ability to mitigate her loss was limited by being out of the country, and as such finding what constitutes suitable tenants became problematic in the circumstances. The tenant did not specify when the prospective tenant would have moved in, and the landlord's inability to satisfy herself with that prospect's suitability was significantly hampered at no fault of her own. Nor do I find that the new rent was so exorbitant to make it unreasonable and unrealistic; this is confirmed by the landlord's new tenants paying \$1700.00 per month. The tenant did not argue the landlord's testimony that she agreed to leave early and to pay rent until the end of June. In this matter, the tenant initiated an early termination of the contract and placed the landlord in a difficult situation; based on the evidence and the parties' testimony I find that the tenant was obliged to pay rent as agreed until the end of June 2011.

Conclusion

The landlord established a claim of \$2900.00. Other than the filing fee, there is no provision for a party to make a claim under the Act for litigation costs or costs related to an application for dispute resolution; therefore I dismiss the landlord's court fees of \$8.00. I authorize the landlord to retain the tenant's \$725.00 security deposit for a balance owing of \$2175.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$2225.00.

This Order may be registered 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: October 26, 2011.

Residential Tenancy Branch