



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

The tenant did not attend this hearing, although I waited until 9:40 a.m. in order to enable the tenant to connect with this hearing. The landlord attended the hearing and was given a full opportunity to be heard, to present evidence and to make submissions. He testified that he sent the tenant a copy of his dispute resolution hearing package by registered mail on July 19, 2011. He provided Canada Post Tracking Numbers to confirm his mailing of this package. I am satisfied that the landlord served this package in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for loss arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord testified that the tenant signed a Residential Tenancy Agreement (the Tenancy Agreement) on June 24, 2011 for a six month fixed term tenancy that was to commence on July 1, 2011 and end on December 31, 2011. He provided a copy of that signed Tenancy Agreement. According to the terms of that Tenancy Agreement, monthly rent was set at \$1,090.00, payable in advance on the first of each month. The landlord continues to hold the tenant's \$545.00 security deposit paid when the tenant agreed to commence this tenancy.

The landlord said that the tenant called him on June 26, 2011 to advise him that she was no longer planning to occupy the rental unit. He said that he immediately initiated efforts to try to re-rent the rental suite using Craigslist. He testified that he was successful in obtaining a new tenant who took possession of the rental unit on July 15, 2011. He said that he had to accept reduced monthly rent of \$975.00 from the new tenant on a six month fixed term tenancy.

The landlord applied for a monetary award of \$545.00 for his loss of rent from July 1, 2011 until July 15, 2011. He asked for permission to retain the tenant's security deposit to offset the monetary award he was seeking. The landlord also applied to recover his \$50.00 filing fee for his application for dispute resolution.

Analysis

Based on the undisputed evidence presented by the landlord, I accept that the landlord suffered a monetary loss when the tenant did not take occupancy of her rental unit and failed to pay the July 2011 rent she committed to pay by signing the Tenancy Agreement. I am also satisfied that the landlord discharged his duty under section 7(2) of the *Act* to take adequate measures to mitigate the tenant's losses. By re-renting the premises for July 15, 2011, the landlord reduced the tenant's losses.

I find that the landlord is entitled to the monetary award of \$545.00 he has claimed for loss of rent for July 2011. Since the landlord has been successful in his application, I also allow the landlord to recover his \$50.00 filing fee from the tenant.

I find that the landlord is entitled to retain the tenant's \$545.00 security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period.

Conclusion

I find that the landlord is entitled to a monetary award of \$545.00 to compensate him for his loss of rent for part of July 2011. I allow the landlord to retain the tenant's \$545.00 security deposit in satisfaction of this monetary award.

I issue a monetary Order in the landlord's favour in the amount of \$50.00 to enable the landlord to recover his filing fee for this application.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 24, 2011
