



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order seeking compensation under the Residential Tenancy Act (the Act) for loss of revenue for the first half of August 2011, and is inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

Both, the landlord and the tenant, were represented in today's hearing and each participated with their submissions, testimony and questions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

The following is undisputed by the parties. The tenancy began on July 01, 2010 and ended July 31, 2011. Rent in the amount of \$800 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 \$400 – which the landlord still holds. The landlord received the tenant's written notice to vacate (Notice to End) on July 03, 2011,

for the tenant to vacate the rental unit July 31, 2011. The Notice to End had been posted on the landlord's door and dated July 01, 2011. The tenant testified the Notice to End was physically posted on the landlord's door on June 30, 2011. The parties agree there was no completion of a condition inspection, and requisite reports, at the outset or the end of the tenancy, and no evidence to this effect has been provided.

The landlord testified that following receipt of the Notice to End she placed an online advertisement on Craigslist on July 4 or 5, 2011. The landlord claims she showed the suite to ten (10) prospective tenants thereafter – specifically between the dates July 10 – 24, 2011. The landlord testified that out of the 10 who viewed the unit, one (1) individual was interested, but the landlord determined they were not a realistic candidate for the unit. The landlord claims that although 10 people viewed the rental unit she was unable to rent the unit for August 01, 2011, possibly due to market conditions, the condition of the suite, or an apparent lack of interest in the unit. The landlord testified that she subsequently was able to rent the suite for August 15, 2011, but that she allowed the new tenants to occupy the suite several days earlier.

The hearing did not have benefit of any document evidence from the landlord in respect to her attempts to mitigate revenue losses. The tenant disputes the landlord's claims that she showed the suite during the referenced 2 week period in July. The tenant claims that she was out of town, but that her son occupied the rental unit July 10-24, 2011 and he advised her that the suite was only shown on 2 occasions during this period. The landlord testified her recollection is that she did not show the suite before or after this period, before August 01, 2011. The landlord seeks loss of revenue for the first half of August 2011 on the basis the tenant did not provide notice to vacate in compliance with the Act.

Analysis

Based on the testimony of the parties, and on the preponderance of all the evidence before me, I find that while the Act requires tenants to give one full month's notice that they are vacating (in compliance with the Act), the Act does not attach a penalty for

failing to do so, or automatically entitles the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of revenue for the month following the month in which they give their notice. However, Section 7 of the Act does provide as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the landlord may have made reasonable efforts to minimize their losses by advertising the rental unit on Craigslist, thereby meeting the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established in section 7(1) in that they did not prove on the balance of probabilities that their loss resulted from the tenant's failure to comply with the Act. Rather, the landlord testified that they showed the unit to 10 prospective tenants and that only one person claimed interest in the unit and that the landlord's inability to rent the suite (and consequent loss of revenue) likely resulted from a lack of tenants interested in this rental property for a myriad of reasons. On the preponderance of the evidence before me, and in the absence of supporting evidence by the landlord proving the landlord's attempts at mitigating this claim, I find that on the balance of probabilities the outcome would not have differed had the tenant been in compliance with the Act by submitting their Notice to End earlier.

As a result, I find the landlord has not proven their claim; therefore the landlord's claim for loss of revenue for the first half of August 2011 **is dismissed**, without leave to reapply.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the entire security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has been dismissed without leave to reapply it is appropriate that I Order the balance of the tenant's security deposit returned to the tenant.

I Order the landlord to return the tenant's security deposit to her. I grant the tenant an Order under Section 67 of the Act for the amount of **\$400**.

Conclusion

The landlord's application **is dismissed**, without leave to reapply.

The tenant is being given a Monetary Order in the amount of **\$400**. 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*.