



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on December 1, 2005 for a 1 year fixed term tenancy beginning on December 1, 2005 that converted to a month to month tenancy on December 1, 2006 for a monthly rent of \$625.00 due on the 1st day of each month with a security deposit of \$312.50 paid.

The parties agree the tenant provided written notice on July 21, 2011 of his intention to end the tenancy on July 31, 2011. The tenant testified there were a number of concerns that lead to his decision to end the tenancy and that when he had the opportunity for a new living situation he took it.

The landlord testified that because of a previous experience where a tenant provided a short notice to end a tenancy and then changed his mind the landlord does not advertise for new tenants when provided with a short notice from a tenant until the tenant actually vacates the rental unit.

The landlord testified they advertise by posting a sign on the front of the residential property and in this case the unit was rented early in August 2011 to begin in September 2011. The tenant testified that he provided the landlord with the new tenant's name as a possible tenant in July, after he had given his notice.

The tenant contends that the new tenant did not take the unit until September 2011 because the rental unit required painting and updating that had to be completed before the landlord would rent it out again. The landlord testified that it was the new tenant who did not want the rental unit until September 2011.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45 of the *Act* requires a tenant who intends to end a tenancy to give the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and is the day before the day in the month that rent is payable under the tenancy agreement.

As such, based on a notice provided by the tenant on July 21, 2011, the earliest the tenant could end the tenancy was August 31, 2011. As the tenant vacated the rental unit on or before July 31, 2011 and did not pay rent for the month of August 2011, I find the landlord suffered a financial loss resulting from a violation of the *Act*. I accept, based on the landlord's evidence, the value of the loss is the equivalent of one month's rent.

In light of the absence of any corroborating evidence or testimony from the new tenant as to the reasons why the rental unit was not rented out to her earlier than September 1, 2011, I find that neither party has established these issues to be relevant in the landlord's claim.

I note the *Act* requires a party making a claim against another for non-compliance with the *Act*, to do whatever is reasonable to minimize the loss and I accept, by the landlord's testimony, the landlord did not seek to advertise the unit until 10 days after receiving the tenant's notice.

However, the landlord should have begun advertising the rental unit immediately upon receiving notice from the tenant. Both parties acknowledge that the new tenant was suggested by this tenant prior to the end of July 2011 and was considered by the landlord for renting the unit, as such, I accept the landlord did take reasonable steps in July 2011 to re-rent the unit and minimize any loss.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$675.00** comprised of \$625.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$323.56 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$351.44**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: November 14, 2011.

Residential Tenancy Branch