



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, MNR, MNSD

Introduction

This hearing dealt with an application by the landlord seeking a monetary order for unpaid rent, an order to receive compensation for loss suffered under the Act and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Is the landlord entitled to retain the security deposit and pet deposit?

Is the landlord entitled to compensation for loss suffered under the Act?

Background and Evidence

The tenancy began on or about January 1, 2009. Rent in the amount of \$3876.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1900.00 and a pet deposit of \$1900.00. This was the second fixed term tenancy agreed to by both parties that was to conclude on January 31, 2012.

The landlord gave the following testimony; is seeking \$400.00 for cleaning the unit, seeking \$826.56 for a new stovetop, \$1938.00 for unpaid rent for November 1-15, 2011, is seeking \$3800.00 for liquidated damages as agreed upon in their lease as the tenant terminated the agreement early, and that a move in or move out condition inspection was not done, but rather an informal walk thru.

The tenant gave the following testimony; gave the landlord notice on August 4, 2011 that they would be vacating the unit on November 15, 2011, felt the landlord did little to mitigate his losses and does not agree with the amount of liquidated damages being sought.

Analysis

The landlord is the applicant in this matter and bears the burden of proof. I address each of his claims as follows;

First Claim- the landlord is seeking \$400.00 for cleaning expenses. The tenant denies this claim. The landlord provided some photos, however he did not provide any receipts of costs incurred in addition to not having a move in and move out condition inspection report I cannot be certain of the condition of the unit and I therefore dismiss this portion of the landlord's claim.

Second Claim – the landlord is seeking \$826.56 to replace a cracked stove top, the tenant's do not dispute this portion of the landlords claim. The landlord provided documentary evidence to support his claim. I award the landlord \$826.56.

Third Claim- the landlord is seeking \$1938.00 for unpaid rent for November 1-15, 2011. The tenant does not dispute this claim and I therefore award the landlord \$1938.00.

Fourth Claim- the landlord is seeking \$3800.00 for liquidated damages. The tenants adamantly deny this portion of the landlords' claim. The tenant testified to the following; that the landlord was rarely in town and travelled quite often. Was given three and a half months notice of the tenancy ending, was seeking six hundred dollars more rent per month for the unit, mistakenly advertised a four bedroom home as a two bedroom for which the tenant contacted the landlord to have corrected, did not hire a leasing agent until the end of October 2011, and feel the landlord did not mitigate his losses as is required under the Act.

The landlord testified to the following; posted an advertisement on a free website at least four times, had a friend who was helping in renting the unit out, was in town for two days to try to arrange viewings, feels that the liquidated damage clause is a genuine pre-estimate of costs that he would incur to rent the unit, hired a leasing agent to assist at the end of October and incurred costs for doing that.

The landlord has had three and half months to make attempts at renting the suite and mitigating his losses. The landlord has only been in this city for 2 days since being given notice and did not hire someone trained in renting units till three months later. He submitted an agreement with a leasing agent for this hearing, however the agreement was unsigned by any leasing agent and I therefore give it no weight. In addition his advertisements for the suite on the free website were incorrect, infrequent and at a substantially higher rent which would contradict any attempts he was making to mitigate. For all of the above reasons, I am not satisfied that the landlord reasonably attempted to mitigate his losses and I therefore dismiss this portion of the landlords' application.

In summary the landlord has been successful in the following;

Unpaid Rent	\$ 1938.00
Filing Fee	\$ 100.00
	\$
	\$
	\$
Total:	\$2894.26

Section 72(2)(b) of the Act states "If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant".

As the landlord is in possession of both deposits I order that the landlord is entitled to retain \$2894.26 of the security and pet deposit in satisfaction of the claim.

Conclusion

The landlord is entitled to retain \$2894.26 of the security and pet deposits.

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: December 19, 2011.

Residential Tenancy Branch