



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 an Application for Dispute Resolution by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damages?

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

Background and Evidence

The tenancy agreement was a twelve month fixed term, commencing May 18, 2011, and ending May 31, 2012. Rent in the amount of \$1,275.00 was payable on the first of each month. A security deposit of \$637.50 was paid by the tenant. The tenancy ended on October 31, 2011.

The landlord testified that the tenant broke the fixed term tenancy agreement and is seeking compensation for loss revenue for the month of November 2011.

The landlord further testified that she is seeking \$300.00 in liquidated damages as specified in clause 23 of the tenancy agreement.

The landlord testified that on September 2, 2011, the tenant gave notice that she would be moving out on October 31, 2011.

The landlord testified that they did advertise the rental unit and have found a new tenant. However, the new tenant is not taking possession of the rental unit until March 1, 2012.

The tenant testified that she gave the landlord two month notice to end tenancy. The tenant states there was a mold problem in the rental unit and it was a health concern for her family.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

The evidence of the tenant was that the rental unit was not healthy to live in due to the mold. There is no evidence to substantiate the tenant's claim that the rental unit was unhealthy to live in, such as a letter from a Health Canada or any medical practitioner.

Further, the tenant made no application to the Residential Tenancy Branch to have the landlord fix the alleged mold problem.

Section 45 of the Act states - Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

I find the tenant breached the terms of the tenancy agreement and Act. The tenant signed a fixed term tenancy agreement. In the tenancy agreement, May 31, 2012, is the date specified as the end of tenancy, which is the earliest date the tenant could have ended tenancy.

The landlord did take reasonable steps to mitigate their loss by advertising the rental unit. I find that the landlord is entitled to loss revenue for rent for the month of November 2011, in the amount of \$1,275.00.

As the tenancy agreement provides a clause for liquidated damages for the cost associated with re-renting the unit, and the amount of \$300.00 was pre-determined by the parties. I find the landlord is entitled to be compensated in the amount of \$300.00.

I find that the landlord has established a total monetary claim of \$1,625.00 comprised of loss revenue, liquidated damages and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the deposit and interest of \$637.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$987.50.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlord is granted a monetary order, and may keep the security deposit and interest in partial satisfaction of the claim.

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: January 27, 2012.

Residential Tenancy Branch