



Dispute Resolution Services

Page: 1

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 for compensation under the Residential Tenancy Act (the "Act") and the tenancy agreement, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties attended the hearing, gave affirmed testimony and were provided the opportunity to present evidence orally and in written and documentary form, and make submissions to me.

Preliminary Matter(s)

The Landlord testified that they were initially claiming \$1000.00 which consisted of \$200.00 in liquidated damages for administrative costs and advertising costs, as well as, \$800.00 for loss of rental income for half a month, October 1-15, 2011.

The Landlord withdrew their request for \$200.00 for administrative costs and advertising costs, and stated that they only wished to pursue the \$800.00 for loss of rental income for half a month.

The Landlord's Application was filed on October 25, 2011 and sent to the Tenants along with the Landlord's evidence the same day. The Tenants confirmed that they received these documents from the Landlord shortly after. The Tenants submitted evidence on January 09, 2012 in response to the Landlord's Application. The Tenants testified that they did not send a copy of their evidence to the Landlord. The Landlord testified that he had not received any evidence from the Tenants prior to the hearing on January 09, 2011. The Residential Tenancy Branch Rules of Procedure (the "Rules") require that a party serve their evidence no later than five days prior to the hearing. The Tenants had sufficient time from October to January to provide their evidence so that it was received by all in advance of the hearing, however, they neglected to provide a copy of their evidence to the Landlord. As a result, I find it appropriate to reject the Tenants evidence as it was not served in accordance with the Rules. The Tenants raised no

objection to this and the hearing proceeded. Tenants gave oral evidence at the hearing in lieu of their written submissions.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

The parties agree that the Tenants signed a written tenancy agreement on September 04, 2011 regarding a rental unit for October 01, 2011. The parties agree that the tenancy agreement stated that it was for a one year fixed term with a rent of \$1600.00 per month due on the first of each month. The parties agree that the Tenants paid the Landlord a security deposit of \$800.00 when the tenancy agreement was signed. The parties agree that the Tenants notified the Landlord in writing on September 09, 2011 that they no longer wanted the rental unit and would not be moving in. The parties agree that the Landlord did not receive rent payment from the Tenants for October 2011. The parties agree that on October 24, 2011 the Tenants made a written request to the Landlord for return of their security deposit and provided a written forwarding address at that time. The Landlord filed an Application for dispute resolution on October 25, 2011.

The Tenants testified that they had been waiting for affordable housing but nothing had been offered to them, so on September 04, 2011 they signed a tenancy agreement with the Landlord, even though it was not where they wanted to live. The Tenants stated that they were finally offered affordable housing on September 08, 2011 with a different landlord. The Tenants stated that they decided to accept the offer and the next day notified the Landlord that they would be cancelling their tenancy agreement and would not be moving in for October 01, 2011 as they had found a larger place elsewhere. The Tenants dispute the Landlord's claim for loss of rental income stating that the Landlord continuously advertises and that they could have found other Tenants to rent for October 01, 2011, as they had lots of time after September 09, 2011 to do so.

The Tenants stated that the Landlord did not offer to return their security deposit, so on October 24, 2011 they made a formal written request and provided the Landlord with their forwarding address in writing. The Tenants stated that they have not made an Application for their security deposit, but they would like this returned to them.

The Landlord testified that the Tenants broke the one year fixed term tenancy agreement, and provided the Landlord no compensation for the rental income loss. The

Landlord stated that while they continually advertise for tenants as they have vacancies in their buildings, they did not know this rental unit available as it had been rented to the Tenants. As a result, the Landlord stated that they could not show the rental unit as an available unit, until after the Tenants gave notice that they were breaking the tenancy agreement on September 09, 2011. The Landlord stated that they were only able to find new tenants for October 15, 2011 and that no one who applied for tenancy wanted the rental unit for October 01, 2011. The Landlord stated that they have lost half a month's rental income as a result. The Landlord requests to keep the \$800.00 security deposit as compensation for their loss of rental income, as this amount represents half a month's rent. The Landlord is also requesting the cost of the filing fee for this Application.

Analysis

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

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

The Act states that a tenant cannot give notice to end a fixed term tenancy with a vacancy date before its anniversary end date, in this case one year, unless the landlord has breached a material term of the tenancy. The Tenants reasons for ending the fixed term tenancy were not due to the Landlord's breach of a material term. As a result I find that the Tenants have breached the terms of the tenancy agreement and the Act and the Landlord is entitled to compensation for the rental income loss.

I find the breaches by the Tenants have caused the Landlord to suffer a loss of half a month's rent in the amount of \$800.00. I find that the Landlord is entitled to a monetary order of \$800.00 to compensate for the rental income loss.

As the Landlord has succeeded in their Application, I find that the Landlord is entitled to recover the \$50.00 fee for this proceeding. This brings the balance of the amount owing to the Landlord to \$850.00.

The Landlord holds the Tenants' security deposit of \$800.00. I order that the Landlord retain the security deposit in partial satisfaction of the claim. I grant the Landlord an order under section 67 for the balance due of **\$50.00**.

Conclusion

I find that the Landlord is entitled to \$850.00 comprised of rental income loss and the filing fee. As I have ordered that the Landlord retain the security deposit totaling \$800.00, I find that the Landlord is entitled to monetary order for the balance owing pursuant to section 67 against the Tenants in the amount of **\$50.00**. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims).

The order accompanies the Landlord's copy of this decision.

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 20, 2012.

Residential Tenancy Branch