



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67; and
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The tenant confirmed that she received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on January 4, 2012. She also confirmed that the landlord had advised her of her amended application for dispute resolution in which the landlord sought an increased monetary award of \$800.00. I am satisfied that the landlord served these documents and her evidence package to the tenant in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for losses arising out of this tenancy? Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The landlord entered into written evidence copies of a Rental Application, emails and text messages to support her assertion that the tenant entered into an oral agreement to rent a suite from her on November 10, 2011. The landlord submitted written evidence that the tenant made a \$400.00 third-party deposit into the landlord's bank account for a security deposit for this rental unit on November 10, 2011. The tenancy was to commence on December 1, 2011. Although the landlord had prepared a residential tenancy agreement for signature that date, the tenant did not sign it as she wanted her male friend who was also planning to reside in the rental unit to sign the agreement with her as co-tenants.

The landlord entered oral and written evidence that the tenant sent her a text message on November 22, 2011, advising that she no longer wanted the rental unit and asked for

a return of her security deposit. The landlord entered written evidence to demonstrate that shortly after she received the tenant's notice that she would not be taking possession of the rental unit, the landlord placed an advertisement in a popular rental website listing the availability of the rental unit on December 1 or December 15, 2011. On December 29, 2011, the landlord was successful in renting the premises to new tenants who took possession on January 1, 2012.

The landlord originally applied for a monetary award of \$400.00, but amended her application to \$800.00, when she was unable to rent the premises to another tenant until January 1, 2012. She applied for this monetary award to compensate her for her loss of rent for December 2011 due to the tenant's late notice that she would not be taking occupancy of the rental unit. The landlord also entered into written evidence copies of exchanges of emails with the tenant, in which the tenant stated that the landlord could keep her security deposit.

The tenant did not submit any written evidence. At the hearing, she did not dispute any of the evidence or testimony provided by the landlord. She explained that shortly after she paid the security deposit and entered into an oral agreement to commence this tenancy on December 1, 2011, her male friend was able to secure employment in a distant community. She said that this unanticipated turn of events made it impossible for them to take possession of the rental unit in accordance with her oral agreement to rent the premises.

Analysis

Section 16 of the *Act* reads as follows:

Start of rights and obligations under tenancy agreement

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

I find that there is undisputed evidence that the landlord received a \$400.00 payment from the tenant on the same day that the tenant met with the landlord and agreed to commence this tenancy on December 1, 2011. Under these circumstances, I find that this tenancy commenced on November 10, 2011, the date when the parties entered into an oral agreement, confirmed by the tenant's payment of a \$400.00 security deposit to the landlord.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. Section 52 of the *Act* requires that a tenant provide this notice in writing, email or text message notification is insufficient to meet this requirement. I find that the tenant did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

There is undisputed evidence that the tenant did not pay any rent for December 2011. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for December 2011, and was successful in re-renting the premises for January 1, 2012. As such, I am satisfied that the landlord has discharged her duty under section 7(2) of the *Act* to minimize the tenant's loss.

I find that the landlord is entitled to recover \$800.00 in loss of rent for December 2011, arising out of the tenant's failure to take occupancy of the rental premises in accordance with their November 10, 2011 agreement to do so. Although the landlord's application does not seek to retain the tenant's security deposit, using the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award. As the landlord was successful in this application, I find that the landlord is entitled to recover the \$50.00 filing fee paid for this application.

Conclusion

I issue a monetary Order in the landlord's favour in the amount of \$450.00 which allows the landlord to recover loss of rent for December 2011 (i.e., \$800.00), to recover the landlord's \$50.00 filing fee for this application, and to retain the tenant's \$400.00 security deposit in partial satisfaction of the monetary award issued in the landlord's favour.

The landlord is provided with these Orders in the above terms and the tenant must be served with a copy of these Orders as soon as possible. Should the tenant fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: February 17, 2012

Residential Tenancy Branch