



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 tenant for a monetary order for compensation for loss under the Act and an order to retain the security deposit in partial satisfaction of the claim.

Although served with the Application for Dispute Resolution and Notice of Hearing on November 18, 2011, by registered mail the tenant did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant has been duly served in accordance with Act.

Issue(s) to be Decided

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a one year fixed term tenancy which began on August 1, 2011 and was to end on July 31, 2012. Rent in the amount of \$1,600.00 was payable on the first of each month. A security deposit of \$1,600.00 was paid by the tenant. The tenancy ended on October 31, 2011.

The landlord testified that in the middle of September 2011, she received a letter from the tenant indicating that the tenant would be vacating the rental unit on October 31, 2011.

The landlord testified that as soon as she received the letter she advertised the rental unit on a website. The landlord testified that it was posted on September 23, 26 and October 5, 10, 15, and 20 for the amount of \$1,500.00.

The landlord testified that she had eleven calls and showed the rental unit to eight prospective tenants. However, only one person was interested in renting the unit and at a reduce rate of \$1,300.00 per month.

The landlord testified that she accepted the offer of \$1,300.00 per month, as the rental unit would have sat empty for the month of November 2011.

Analysis

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

The evidence of the landlord was that the parties entered into a fixed term tenancy, which was to end on July 31, 2012. The tenant gave notice and the tenancy ended on October 31, 2011, leaving a balance of nine months on the fixed term tenancy agreement.

The Residential Tenancy 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

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

I find that the tenant has breached section 45 of the Act.

The evidence of the landlord was she immediately advertised the rental unit on a website. The landlord had eleven calls and showed the rental unit to eight potential tenants. The only person interest in renting the unit offered to rent the unit at a lower monthly rate. The landlord accepted the offer to ensure the unit did not sit empty and the new tenancy commenced on November 1, 2011.

I find the landlord did suffer a loss, and the landlord made reasonable effort to minimize the loss.

I find that landlord is entitled to compensation for the remaining nine months of the fixed term tenancy agreement. The landlord is entitled to receive the difference between what they would have received from the defaulting tenant and what they were able to re-rent the premises for.

I find that the landlord has established a total monetary claim of **\$2,750.00** comprised of the difference between the two rents for the balance of un-expired term of tenancy and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$1,600.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,150.00**.

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 as partial satisfaction of the claim, and is granted an order for the balance due.

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 01, 2012.

Residential Tenancy Branch