



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for unpaid rent and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Is the landlord entitled to recover unpaid rent or loss of rent for the month of December 2011 from the tenant?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced August 1, 2010 and the tenant was required to pay rent of \$775.00 on the last day of every month for the following month. The tenant paid a security deposit of \$375.00. The tenant returned vacant possession of the unit to the landlord on November 30, 2011. With this application the landlord is seeking to recover unpaid rent or loss of rent for the month of December 2011.

The landlord's agent made the following submissions: The tenant sent the landlord a text message on October 31, 2011 to give notice to end the tenancy effective November 30, 2011. The landlord accepted this form of notice and began advertising for a new tenant. On November 13, 2011 the tenant sent a text to the landlord to ask the landlord if she could stay in the rental unit. As a replacement tenant had not yet been secured the landlord advised the tenant she could stay and the landlord withdrew the rental ads. On November 17, 2011 the tenant sent the landlord a text advising the landlord that she would be vacating on November 30, 2011 as she had paid a security deposit on another rental unit. The landlord responded by requesting the tenant provide her with proper written notice to end tenancy. The tenant did not provide such notice; however, the

landlord resumed advertising efforts November 17, 2011 and the landlord secured a new tenant for January 1, 2012.

The tenant made the following submissions: The tenant did not see any rental advertisements for the unit until November 7, 2011 and there was a showing of the unit on November 11, 2011. The tenant sent a text to the landlord on November 13, 2011 to say she “might need to stay”. On November 17, 2011 the tenant informed the landlord she could not get out of the other tenancy agreement she had entered into and that she would be leaving at the end of November. The tenant and landlord usually communicated via text message and that is why she did not give the landlord proper written notice even though the landlord had asked for after the text of November 17, 2011.

The tenant was of the position the landlord could have done more to obtain a tenant for December 2011 as evidence by the delayed advertising efforts in early November 2011. Further, the landlord entered into a new tenancy agreement November 21, 2011 to commence January 1, 2012 rather than looking for a tenant who could take the unit for December 2011. The tenant argued that it is unlikely the withdrawal of the advertising efforts for three days, from November 13 – 17, 2011 caused the vacancy for December 2011.

The landlord’s agent responded that the landlord did not delay in advertising efforts and that a prospective tenant was lost in mid-November 2011 when the tenant asked to stay and the landlord agreed she could.

Neither party provided copies of the text messages exchanged between them or the advertisements to which they both referred to. Rather, this proceeding was based upon the landlord’s application and verbal testimony heard during the hearing.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Where a tenant wishes to end a month to month tenancy the Act requires that the tenant give the landlord at least one full month of written notice. Based on the testimony of both parties, I accept that the landlord had waived her entitlement to proper written notice when the tenant sent the October 31, 2011 text.

Based on the balance of probabilities, I accept that on November 13, 2011 the landlord and tenant had mutually agreed to withdraw the notice to end tenancy. I make this determination because in the details of dispute on the application the landlord states: "On 2011-11-13 the tenant then sent me a text message asking if the suite was rented out, it had not been rented yet, so she asked permission to stay in the suite. I told her yes." Whereas, the tenant did not provide her position prior to the hearing and the tenant did not provide a copy of the text messages that would contradict the landlord's written statements.

Since I found the parties had withdrawn the original notice to end tenancy the effect is that as of November 13, 2011 the tenancy was reinstated and would continue on a month-to-month basis until such time another notice to end tenancy took effect.

Based on the testimony of both parties, I find the landlord did request the tenant given proper written notice when the tenant communicated to her a second time that she wished to end the tenancy. I find the landlord was invoking her right under the Act to receive proper written notice and the tenant was obligated to give the landlord proper notice to end the tenancy.

In light of the above, I find the tenant violated the Act by not giving proper written notice when requested to do so November 17, 2011. Based upon the tenant's own submission the landlord secured a new tenant on November 21, 2011 and I find this demonstrates the landlord's reasonable efforts to mitigate her losses. I find the tenant's submission that the landlord did not advertisement until November 7, 2011 to be irrelevant and of no consequence since the parties had agreed to continue with the tenancy on November 13, 2011. I further find the tenant's submission that the landlord could have continued to look for a replacement tenant at the end of November 2011 rather than accept the suitable tenant that came along November 21, 2011 to be unreasonable. It is important for the tenant to understand that not every viewing or tenancy applicant is a desirable or suitable tenant and incoming tenants often have to give their current landlord sufficient notice. Therefore, I find the tenant's actions resulted in the landlord's loss of rent for December 2011 and I grant the landlord's request to recover the loss from the tenant.

As the landlord was successful in this application I award the \$50.00 filing fee to the landlord. The landlord is authorized to retain the tenant's security deposit in partial satisfaction of the rent owed to the landlord. Accordingly, landlord is provided a Monetary Order for the balance of \$450.00 [$\$775.00 + 50.00 - 375.00$] to serve upon the tenant.

The Monetary Order may be enforced in Provincial Court (Small Claims) as an Order of that court.

Conclusion

The landlord has been authorized to retain the security deposit and has been provide a Monetary Order for the balance of \$450.00 to serve upon the tenant.

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: March 02, 2012.

Residential Tenancy Branch