



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNR, MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the balance of rent for January 2012, loss of income and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim against the security deposit and if so in what amount? Is the landlord entitled to loss of income and to recover the filing fee?

Background and Evidence

The tenancy started on September 01, 2011 for a fixed term of one year. The monthly rent was \$1,600.00. Prior to moving in, the tenant paid a deposit of \$800.00. Three tenants signed the tenancy agreement. Due to medical problems in December 2011, one of the tenants had to move out. For financial reasons, the other two tenants decided to end the tenancy. After speaking with the landlord, on December 19, 2011, the tenants gave the landlord written notice to end the tenancy on January 31, 2012.

Two tenants moved out at the end of December and the remaining tenant paid \$1,200.00 for January. The tenant informed the landlord that she could retain \$400.00 of the deposit for outstanding rent. The landlord agreed that she had had this conversation with the tenant. The landlord stated that she asked the tenants to find new tenants for February 01, 2012. The landlord placed an online advertisement on January 08, 2012 and did not have a single showing. The landlord received some interest but the prospective tenants called to cancel the appointment to view the rental unit.

On February 01, 2012, both parties conducted a move out inspection and the tenant handed over the keys to the landlord and provided the landlord with a forwarding address. The landlord stated that due to seasonal fluctuations, she was unable to find a tenant for February or March and is claiming \$ 3,200.00 as loss of income for these two months. The landlord is also claiming the balance of rent for January (\$400.00), the cost of mailing and the filing fee (\$50.00) for a total of \$3,700.00.

Analysis

Based on the testimony of both parties, I find that the tenant ended the fixed term tenancy agreement prior to the end date, thereby breaching the terms of the tenancy agreement.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

In this case, the landlord did not make any efforts to look for a new tenant prior to January 08, 2012. The landlord was aware of seasonal demands with regard to rental vacancies and was also informed sometime prior to December 19, that the tenancy would be ending on January 31, 2012. Despite this, the landlord waited until January 08 to advertise the vacancy, which would be too late for tenants looking to rent for February 01.

Based on the testimony of both parties, I find that the landlord did not make efforts to mitigate her losses and is therefore is not entitled to the loss of income she states she incurred due to the breaking of the fixed term lease by the tenant.

The parties agreed that the landlord could retain \$400.00 from the security deposit and therefore I find that the landlord is entitled to this amount. The legislation does not permit me to award any litigation related costs other than the filing fee. Since the landlord has not proven her claim for loss of income, I find that she must bear the cost of filing this application.

Conclusion

The landlord may retain \$400.00 from the security deposit and must return \$400.00 to the tenant within 15 days of receipt 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: April 03, 2012.

Residential Tenancy Branch