

noDECISION

Dispute Codes MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order to keep all or part of the security deposit to cover the cost of re-renting and lost revenue and the recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have acknowledged receiving the notice of hearing and evidence package submitted by the other party, I am satisfied that both have been properly served under the Act.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for lost revenue?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on November 1, 2011 on a fixed term tenancy until October 31, 2012 as shown in the submitted signed tenancy agreement. The monthly rent was \$1,250.00 payable on the 1st of each month. A security deposit of \$625.00 was paid.

Both parties have agreed that the Tenant gave notice to vacate on January 29, 2012 to move out on February 29, 2012. The Tenants vacated the rental unit on February 28, 2012 and provided their forwarding address in writing on February 27, 2012.

The Landlord seeks a monetary order for \$1,250.00 for loss of rental income for March of 2012 as they were unable to re-rent the unit until April 1, 2012. The Landlord states that the rental was advertised in "FSJ", a local internet classifieds. The Landlord has provided direct testimony that the rental unit was rented out for April 1, 2012 as a furnished rental unit as opposed to the Tenant's unfurnished rental. The Tenant disputes the Landlord's claims that the rental was not re-rented for March 2012. The Tenant refers to their "CD-Video" conversation with the Landlord's Leasing Agent, Shannon on February 28, 2012 during the condition inspection report for the move-out. The Tenant has provided a video clip on a CD and a transcript of the condition inspection where the Landlord's Agent states in response to the Tenant's question, (Tenant) "Oh good, so then you got it rented then?" Shan (Landlord's Agent), "Oh ya,

this is already gone. Ya I got a waiting list already for 7 more just for this building. You just can't keep up to hit hey." The Tenant states that video was taken and witness by a third party, A.R. as noted on the transcript.

Analysis

The onus or burden of proof is on the party making the claim, in this case the Landlord is responsible as they have made the application. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support their claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails. The Landlord has provided direct testimony which is being refuted by the Tenant. The Tenant has provided supporting evidence in the form of a "CD-Video" with a transcript that is in conflict with the Landlord's direct testimony. The Landlord has failed to provide sufficient evidence to establish their claim for loss of rental income. I find on a balance of probabilities that the Landlord's claim has not been established and the application is dismissed without leave to reapply.

As no claim has been established, I find that the Tenant is entitled to the return of the \$625.00 security deposit. The Tenant is granted a monetary order for \$625.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord's application is dismissed without leave to reapply.
The Tenant is granted a monetary order for \$625.00.

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: May 14, 2012.

Residential Tenancy Branch