



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNR FF

Introduction

This matter first convened on April 17, 2012 to deal with an application by the tenant for recovery of her security deposit. I adjourned the matter to allow the landlord to file an application to be heard with the tenant's application. The landlord subsequently applied for a monetary order and an order to retain the security deposit in partial compensation of the claim. The hearing reconvened to deal with both applications on May 9, 2012. On both dates the tenant and the landlord participated in the teleconference hearing.

At the outset of the hearing, each party confirmed that they had received the other party's evidence. Neither party raised any issues regarding service of the application or the evidence. I have reviewed all testimony and other evidence. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the tenant entitled to double recovery of the security deposit?
Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

On March 26, 2011 the landlord and the tenant signed the tenancy agreement for a tenancy to begin on June 1, 2011. The tenancy was to be for a fixed term ending June 30, 2012, with monthly rent in the amount of \$2250. On April 11, 2011 the tenant paid the landlord a security deposit of \$1125.

On April 18, 2011 the tenant emailed the landlord to give notice that she was not moving into the rental unit. The landlord re-rented the unit beginning July 1, 2011 for a reduced monthly rent of \$1875.

Tenant's Application

The tenant's evidence regarding her application was as follows.

On March 7, 2011 the tenant met with the landlord to view the apartment. The tenant said she had two cats, and the landlord said that was okay. On March 26, 2011 the tenant signed the tenancy agreement, but the landlord did not give the tenant a copy of the tenancy agreement. On April 18, 2011 the tenant gave the landlord notice by email that she was not moving into the rental unit. The tenant gave the landlord her written forwarding address by registered mail on July 12, 2011, but the landlord did not apply to keep the tenant's security deposit until 283 days after receiving the tenant's written forwarding address.

The tenant has claimed double recovery of her security deposit, in the amount of \$2250, and copying, faxing and mailing fees of \$91.83.

The landlord's response to the tenant's application was as follows.

The landlord acknowledged receiving the tenant's registered letter requesting return of her security deposit. The landlord responded to the tenant by email saying that she felt the security deposit was fair compensation for the landlord's lost revenue, and the landlord asked the tenant to respond. Before sending the registered letter, the tenant had proceeded casually and informally, and she did not serve proper and formal notice to end the tenancy. The landlord never wished to keep the deposit without justification and fairness.

Landlord's Application

The landlord's evidence on her application was as follows.

No pets are allowed in the rental unit. If the landlord allowed pets, she would have taken a pet deposit. The rental unit was advertised as "n/p" (no pets).

The landlord scanned and emailed a copy of the lease to the tenant on April 14, 2011.

On April 18, 2011, the landlord received the tenant's email that she was not going to move in, and the landlord took immediate steps to attempt to re-rent the unit. She first contacted other previously interested tenants. She then put an ad in the local paper for April 22, 2011. The landlord ran 17 ads between that time and June 1, 2011. The landlord tried advertising the unit in several different ways, in order to attract potential

renters. The ads for \$2400 included hydro, internet including a land line, and existing cable, all of which represented a value of approximately \$300 per month. The landlord re-rented the unit beginning July 1, 2011, at a reduced rent of \$1875.

The landlord has claimed the following amounts:

- 1) \$2250 lost revenue for June 2011;
- 2) \$4125 for the balance of the rent (\$375 per month) for the balance of the term (11 months); and
- 3) \$38.51 in postage fees

In support of her application, the landlord submitted copies of several ads she posted in her efforts to re-rent the unit.

The tenant's response to the landlord's application was as follows.

The landlord did not begin advertising the rental unit until May 12, 2011, and the terms of the tenancy were not the same. The landlord was advertising the rental unit as "no pets," and some of the ads were asking for rent of \$2400.

Analysis

Security Deposit

Section 38 of the Residential Tenancy Act requires that 15 days after the later of the end of tenancy and the tenant providing the landlord with a written forwarding address, the landlord must repay the security deposit or make an application for dispute resolution. If the landlord fails to do so, then the tenant is entitled to recovery of double the base amount of the security deposit.

In this case, the tenant mailed her forwarding address in writing on July 12, 2011, and the landlord was deemed to have received the registered mail five days later, on July 17, 2011. The landlord has failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address in writing. I therefore find that the tenant has established a claim for double recovery of her security deposit, in the amount of \$2250.

Landlord's Claim for Lost Revenue

The landlord is not entitled to the amount claimed for lost revenue. The landlord failed to take reasonable steps to mitigate her loss when she advertised the unit for a potentially

higher rent and on different terms than the tenant's agreement. The landlord did not establish the actual value of the included utilities, and did not address the fact that some prospective tenants may choose not to have internet or cable, or prefer to have hydro in their own name and determine how to regulate their own hydro costs.

Filing Fees and Other Costs

Both the tenant and the landlord have applied for postage and other costs associated with the dispute resolution process. The only costs associated with the dispute resolution process that are normally recoverable are the filing fees. I therefore dismiss the portions of both applications claiming postage, copying and faxing costs.

As the tenant was mostly successful in her application, I find she is entitled to recovery of the \$50 filing fee for the cost of her application.

As the landlord's claim was not successful, I find she is not entitled to recovery of her filing fee.

Conclusion

The landlord's application is dismissed.

I grant the tenant an order under section 67 for the balance due of \$2300. This order may be filed in the Small Claims Court and enforced as an order 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: May 22, 2012.

Residential Tenancy Branch