



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MNDC, MND, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover damages in the amount of \$25.00 for broken blinds, and for loss of revenue and is inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim. I accept the landlord's verbal amendment in the hearing that they only seek compensation under the Residential Tenancy Act (the Act) for loss of revenue for the month of April 2012 in the amount of \$900.00.

Both, the landlord and the tenant, were represented in today's hearing and each participated with their submissions, testimony and questions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Background and Evidence

The following is undisputed by the parties. The tenancy began on January 29, 2011 and ended March 31, 2012. Rent in the amount of \$900.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$450.00, of which the landlord and tenant agree the landlord still holds \$425.00 – the remainder of which the parties agreed could be kept by the landlord.

The landlord testified they received tenant's written notice to vacate (Notice to End) through their mail slot on March 03, 2012, for the tenant to vacate the rental unit March 31, 2012. The tenant testified that they placed the letter through the landlord's mail slot on February 29, 2012 (the same date as the Notice to end is dated) and telephoned the landlord on March 03, 2012 simply to confirm their receipt of their Notice to End.

The landlord's testimony is that the tenant's Notice to End was received Saturday, March 03, 2012 and they stamped it received on that date. The landlord testified they were entitled to receive the Notice to End no later than February 29, 2012. The landlord provided a copy of the tenant's Notice to End dated February 29, 2012. The landlord testified they are requesting loss of rent for the month of April 2012 due to the tenant's purported late notice to vacate. The landlord further testified and submitted that their efforts to re-rent the unit for April 01, 2012 consisted of advertising the unit on several websites, and local classified websites; and, provided a summary listing of available rental units on Craigslist spanning from February 13, 2012 to May 26, 2012; and, that they also have units available and advertised on Kijiji on an ongoing basis as well. In addition the landlord also testified they were not able to re-rent the unit for April 01, 2012 due to a number of factors which would not make the rental unit suitable for the majority of their family-oriented rental market. The landlord further testified that there simply was no interest in the rental unit from March 03 to April 01, 2012. The landlord also testified that at any one time the landlord has at least 8 rental units advertised for rent similar to the subject rental unit.

The landlord's monetary claim is for \$900.00 for loss of revenue for April 2012. The tenant argued that the landlord's claim is not valid because they provided the landlord with proper Notice to End.

Analysis

Based on the testimony of the parties, and on the preponderance of all the evidence before me, I prefer the evidence of the landlord that, on balance of probabilities, they received the tenant's Notice to End later than required by the Act. I find that while the

Act requires tenants to give one full month's notice that they are vacating, the Act does not attach a penalty for failing to do so, or automatically entitles the landlord to compensation for loss of revenue for the following month. There is no provision in the Act whereby tenants who fail to give notice in accordance with the Act can automatically be held liable for loss of revenue for the month which follows. However, **Section 7** of the Act does provide as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find that in this matter, the landlord may have made reasonable efforts to minimize their losses by advertising – although not solely advertising the subject rental unit but an array of rental units, and in doing so meeting the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established in section 7(1) in that they did not prove on the balance of probabilities that their loss resulted from the tenant's failure to comply with the Act. Rather, the landlord testified that their loss resulted from a lack of prospective tenants interested in this rental property, and that the outcome would likely not have differed had the tenant been in compliance with the Act by submitting their Notice to End 3 days earlier. As a result, the landlord's claim for loss of revenue for April 2012 **is dismissed** without leave to reapply, and effectively the landlord's application is dismissed in its entirety.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

The Arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or

- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of \$425.00 of the security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has been dismissed without leave to reapply it is appropriate that I Order the balance of the tenant's security deposit returned to the tenant.

I Order that the landlord return the security deposit in the amount of \$425.00 to the tenant, forthwith, and I will grant the tenant an Order for this amount.

Conclusion

The tenant is being given a Monetary Order in the amount of **\$425.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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: June 06, 2012

Residential Tenancy Branch