

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Tenant and an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

The Tenant applied on May 31, 2012 for:

1. A Monetary Order for compensation or loss - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord applied on June 1, 2011 for:

1. An Order to keep all or part of the security and pet deposit - Section 38;
2. A Monetary Order for compensation – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenant and Landlord were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Tenant entitled to the monetary amounts claimed?

Is the Landlord entitled to the monetary amounts claimed?

Are the Parties entitled to recovery of their respective filing fees?

Background and Evidence

The Parties do not dispute that on May 12, 2012, the Tenants gave the Landlord \$1,550.00 for a pet and security deposit on the unit and that on May 14, 2012, the Tenants signed a tenancy agreement for the unit with an occupancy date of July 1, 2012 and on a fixed term to June 30, 2013. The Parties do not dispute that on May 23, 2012, the Tenants paid the rent for July 2012 in the amount of \$1,550.00.

The Landlord states that on May 23, 2012 the Parties had some disagreement with the method of rent payments and that on May 24, 2012 the Tenants told the Landlord that they were no longer interested in renting the unit and asked for the return of the monies paid to the Landlord. The Landlord states that they lived in the unit at the time and were renting the unit out as they were planning on going out of the country. The Landlord states that when the Tenants ended the tenancy, the Landlord immediately commenced advertising online on numerous sites such as Craigslist, and Property Guys and in the local paper and were able to rent the unit out to new tenants commencing August 13, 2012 on a fixed term to January 13, 2013 and at the same monthly rental rate. The Landlord did not file any supporting or corroborating evidence in relation to this employment. The Landlord states that they are living in the unit until the new tenant's occupancy date. The Landlord states that as a result of the Tenants' actions, the Landlord lost rental income and an employment opportunity out of country. The Landlord states that following this occupancy the Landlord will be staying with family but would have paid rent elsewhere if the Tenants had taken the unit as planned. The Landlord claims \$3,100.00 in compensation for lost rental income for two months.

The Tenant states that the Landlord did not sign the tenancy agreement and that the first time they saw the Landlords' signature on the tenancy agreement was on May 28, 2012, after the Tenants had told the Landlord that they would not rent the unit. The Tenant states that on May 24, 2012, the Landlord sent an email asking the Tenants to re-sign a new tenancy agreement and addendum as the Landlord had made amendments to the addendum. The Tenant states that the changes would have resulted in greater costs to the Tenants in relation to professional lawn services and responsibility for damages by water use. The Tenant states that the Landlord was told that the Tenants were not prepared to accept these changes and the Landlord made other suggestions. The Tenant states that the several changes being proposed by the Landlord made the Tenants feel uncomfortable and uncertain as they had already signed the tenancy agreement but had not received a signed copy from the Landlords. As a result, the Tenant states that they decided not to rent the unit. The Tenant states that on May 28, 2012 the Landlord sent a letter informing that Tenants that upon receipt

of their forwarding address the Landlords would return the first month's rent paid. The Tenant states that their address was sent to the Landlord by registered mail on May 29, 2012 and that the Tenants also requested return of the security and pet deposit. The Tenants argue that as the Landlords never signed the tenancy agreement and continued to negotiate terms after the Tenants signed the agreement and paid the monies that the tenancy agreement is not valid. The Tenants claim \$3,100.00.

Analysis

A valid agreement is entered into upon the acceptance of an offer and the provision of consideration. Based on the undisputed evidence that the Landlord offered the tenancy agreement and that the Tenants signed the tenancy agreement offered by the Landlord and paid the rent and security deposit to the Landlord, I find that the Tenants accepted the offer, paid valuable consideration and entered into a valid tenancy agreement. Although the Landlord proposed changes to the agreement following the Tenants' acceptance and payment of consideration, the Tenants were not obliged to accept the changes and could have taken occupancy of the unit pursuant to the binding agreement. The Tenants did not and instead chose to end the contact before the fixed term date. As such, I find that the Tenants breached the tenancy agreement.

Section 7 of the Act provides that where a tenant does not comply with the tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that a loss occurred and costs have been incurred or established, that the damage or loss claimed was caused by the actions or neglect of the responding party, and that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed. Accepting the undisputed evidence of the Landlord that the Landlord advertised the unit immediately and obtained a new tenant for August 13, 2012, and accepting that the Tenants paid the rent for July 2012, I find that the Landlord lost rental income for August 1 to 12, 2012 as a result of the Tenants' breach and took reasonable measures to mitigate that loss by accepting a shorter fixed term tenancy from the new tenant. Based on a per diem calculation of

\$50.00 (\$1,550.00 / 31) for the month of August 2012, I find that the Landlord is entitled to compensation for lost rental income for the period August 1 to August 12, 2012 in the amount of **\$600.00** (12 days x \$50.00). As the Landlord has only been partially successful with its claim, I decline to award recovery of the filing fee. As the Landlord holds **\$1,550.00** as the security and pet deposit with zero interest, I set the **\$600.00** entitlement off this amount leaving **\$950.00** owing by the Landlord to the Tenants. As the Tenant has been only partially successful with its claim, I decline to award recovery of the filing fee to the Tenant.

Conclusion

I order that the Landlord retain **\$600.00** from the **deposit** and interest of \$1,550.00 in satisfaction of the claim and I grant the Tenant an order under Section 67 of the Act for the remaining balance of **\$950.00**. If necessary, 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: August 1, 2012.

Residential Tenancy Branch