



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent and to retain the tenant's security deposit in full satisfaction of the claim. Both parties appeared at the hearing and gave evidence.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether or not the landlord is entitled to monetary compensation for loss of rent.

Background and Evidence

The tenancy began on October 1, 2011 for a one-year fixed term and was ended by the tenant on April 30, 2012. The rent was \$900.00 per month and a security deposit of \$450.00 was paid. The landlord submitted into evidence a copy of the tenancy agreement and copies of communications.

The landlord testified that the tenant terminated the tenancy before its expiry date in violation of the agreement. The landlord pointed out that the tenant also failed to provide one month Notice in writing that he was ending the tenancy, which is a requirement under the Act. The landlord testified that the unit remained vacant during the following month and the landlord incurred a loss of \$900.00, as a result. However, the landlord stated that they decided to limit their claim to \$450.00 which would be covered by the security deposit being held for the tenant.

The tenant testified that he had a verbal discussion with the property manager during which his verbal notice was accepted. The tenant testified that he was assured that he would be refunded a portion of his security deposit.

Analysis

Section 44 (1)(b) of the Act provides that a tenancy can be ended on the expiry date, if the tenancy agreement is a fixed term and the agreement also requires that the tenant will vacate the rental unit on the date specified as the end of the tenancy.

I find that, in the case before me, the tenant did not wait until the expiry date of the fixed term before vacating.

Section 44(1)(c) of the Act also allows the parties to end a tenancy if the landlord and tenant agree in writing to end the tenancy.

I find that the parties did not sign a mutual agreement to end the tenancy.

Section 45 of the Act permits a tenant to end a periodic tenancy by giving the landlord written notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and; (b) is the day before the day in the month that rent is payable under the tenancy agreement.

I find that section 45 would only be an option for the tenant if the tenant did not sign a fixed-term agreement. In any case, I find that this tenant never provided one-month written notice to end the tenancy and even if the tenancy was a month-to-month tenancy instead of a fixed-term lease, the tenant would not be in compliance with the Act in this situation.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that the tenant violated the terms of the tenancy agreement and the landlord suffered a loss as a result.

Based on the above facts, I find the landlord met all elements of the test for damages and successfully established entitlement to the \$450.00 being claimed.

Conclusion

I hereby grant the Landlord entitlement to compensation under section 67 in the amount of \$450.00. I order that the landlord retain the tenant's security deposit in full satisfaction of the claim.

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: July 09, 2012.

Residential Tenancy Branch