



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD and FF

This application was brought by the landlord on June 14, 2012 seeking a monetary award for loss or damage under the legislation or rental agreement, recovery of the filing fee for this proceeding and authorization to retain the security deposit in set off against the balanced owed.

Issue(s) to be Decided

This application requires a decision on whether the landlord is entitled to a monetary award as requested.

Background and Evidence

This tenancy initially began on October 1, 2011 and ended on May 31, 2012. Rent was \$900 per month and the landlord holds a security deposit of \$450 paid at the beginning of the tenancy.

During the hearing, the landlord submitted a copy of the tenant's written notice to end the tenancy dated May 11, 2012 and setting an end of tenancy date of May 31, 2012. The landlord gave further uncontested evidence that the tenant had left property in the rental unit and did not give vacant possession until June 3, 2012.

The landlord was not able to begin a new tenancy until July 1, 2012.

The parties gave conflicting evidence as to whether the tenant was not able to reach the landlords as they were away and to the effect that the attending landlord's husband had given assurance that the late notice was acceptable.

As there was no agreement on those issues, I have had to rely entirely on the written record.

Analysis

Section 45(1) of the *Act* provides that a tenant's notice to end tenancy must be given on a day before the next rent due date to be effective one-month later. In the present matter, I find that notice was given late and the tenant breached the notice requirements of the *Act*.

Section 7(1) of the *Act* states that if one party to a rental agreement suffers a loss due to the other's non-compliance with the legislation or rental agreement, then the non-compliant party must compensate the other for the loss.

However, section 7(2) of the *Act* must do whatever is reasonable to minimize the loss claimed.

In this dispute, the landlord has given no documentary evidence to prove that she began to advertise the rental unit immediately after receiving the tenant's May 11, 2012 notice, although she did state that she began to advertise on Kijiji and Craigslist.

Therefore, I must find that the landlord has not proven that she made a reasonable effort to find new tenants. However, I find that notice was given sufficiently late, and particularly in view of the tenant's overholding until June 3, 2012, that the landlord is entitled to recover one-half of the loss of rent for June 2012.

Therefore, as authorized by section 72 of the *Act*, I hereby order that the landlord may retain the tenant's security deposit in compensation for the half month's rent.

As the landlord did not submit proof of timely advertising of the rental unit, I decline to award the filing fee.

Conclusion

The landlord is authorized to retain the tenant's security deposit in full satisfaction of the loss of rent and the tenant may make no claim for its return.

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 10, 2012.

Residential Tenancy Branch