



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR, MNSD, O, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing them to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

At the outset of the hearing, the tenant advised that she expected her witness to attend the hearing. By the time the hearing ended the tenant's witness had not joined her at her location or called into the hearing and as the tenant did not request an adjournment, the hearing concluded without me having heard from that witness.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on September 1, 2011 and that it was set to run for a fixed term ending on August 31, 2012. They further agreed that on April 30, the tenant gave written notice advising that she would be ending the tenancy in June 2012. They further agreed that rent was set at \$900.00 per month and that the tenant paid a \$450.00 security deposit at the outset of the tenancy.

The tenant testified that she purchased a home and telephoned the corporate landlord's office to inquire about whether she could end the fixed term early. The tenant testified that she spoke with a woman named N. Who told her that she would forfeit her security deposit and be charged an additional \$250.00. N. appeared on behalf of the landlord and testified that she did not recall conversing with the tenant, but testified that she is frequently asked by tenants whether they may end a fixed term early and consistently advises tenants that they may be responsible for rent until the unit is re-rented.

The landlord provided evidence showing that the unit was advertised for rent on May 1. The landlord further testified that on July 30 the owner gave instructions to stop

advertising as she had been advised by the strata council that recent changes to the strata rules would prevent her from renting the unit. The landlord confirmed that the rental advertisements were removed on July 30.

Analysis

The tenancy agreement clearly binds the tenant to a term expiring on August 31, 2012. As N. testified that she routinely advises tenants seeking to break a fixed term that they may be responsible for rent, I am not persuaded that she made a different representation to this tenant. I find that the tenant did not have the landlord's permission to break the fixed term and I find that she was bound by the fixed term.

While the tenant had no control over the change to the strata rules which prevent owners from renting, I find that the landlord would not have lost income had the tenant not breached the fixed term. I find that the landlord acted reasonably in advertising the unit and that as the strata had advised that it would not permit rentals, acted reasonably in discontinuing the advertisement. I find that advertising the rental unit for sale was a reasonable alternative as the tenant's liability may have been reduced had the unit sold prior to August 31.

I note that the tenant submitted written evidence regarding the condition of the unit at the time the tenancy began. I have not considered this evidence as it is irrelevant to the claim before me.

Conclusion

I award the landlord \$1,850.00 which represents 2 months of lost income and the \$50.00 filing fee paid to bring this application.

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: September 20, 2012

Residential Tenancy Branch