



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNR, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, and the filing fee. The tenant applied for a monetary order for the return of the security deposit and for the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income and the filing fee? Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

On November 21, 2011, the tenant entered into a fixed term tenancy agreement with the landlord. The monthly rent was \$1,550.00 due on the 20th of each month. The tenant paid a security deposit of \$775.00.

On December 15, 2012, the tenant decided not to rent the unit based on the fact that the yard was not fenced as stated in the rental advertisement. The tenant sent a letter to the landlord by fax informing the landlord of her intentions to cancel the lease.

The landlord stated that she started advertising the availability of the unit on December 19 and was successful in finding a tenant for February 01 at a reduced rent of \$1,500.00.

On January 06, 2012, the tenant gave the landlord her forwarding address in writing with a request for the return of the security deposit. The tenant sent two more reminders and then filed this application for dispute resolution.

The landlord testified that she was unable to rent the unit for January and therefore suffered a loss of income. In addition, she had to reduce the rent to find a tenant for February 01. During the hearing the landlord agreed to drop her claim for the loss of income due to the reduced rent.

Analysis

Landlord's application:

Section 16 of the *Residential Tenancy Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The parties entered into a fixed term tenancy agreement on November 21, 2011 and therefore the rights and obligations of both parties took effect that date even though the tenant never moved in. Therefore the tenant was bound by section 45(2) of the *Residential Tenancy Act*.

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord 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
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

Based on the testimony of both parties, I find that the tenant informed the landlord that she would not be moving in on December 15, 2011. Since the tenant was in a fixed term tenancy, she was ending the tenancy prior to the end date and is therefore responsible for the loss of income suffered by the landlord.

The landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Based on the testimony of the landlord I find that she attempted to mitigate her losses by advertising and finding a tenant for February 01 and is therefore entitled to the loss that she suffered for the period of December 20, 2011 to February 01, 2012 in the amount of **\$2,066.67** (as claimed by the landlord). Since the landlord has proven her claim she is entitled to the recovery of her filing fee in the amount of **\$50.00**.

Overall the landlord has established a claim of **\$2,116.67**.

Tenant's application:

Section 38(1) of the Act provides that the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. If the landlord fails to repay the security deposit or make an application for dispute resolution within 15 days of receiving the tenant's forwarding address, the landlord is liable under section 38(6), which provides that the landlord must pay the tenant double the amount of the security deposit.

In this case, the landlord failed to return the security deposit or file an application to keep it within 15 days of receiving the tenant's forwarding address in writing and therefore must return double the security deposit.

Since the tenant has proven her case, she is entitled to the recovery of the filing fee of \$50.00.

Overall, the tenant has established a claim of **\$1,600.00**.

I will use the offsetting provisions of section 72 of the *Act* to grant the landlord a monetary order in the amount of \$516.67 which consists of difference between the established entitlements of the parties.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of **\$516.67**. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for \$516.67.

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: October 18, 2012.

Residential Tenancy Branch