



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent

The landlord provided document evidence to confirm the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 20, 2012 in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the evidence of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for damage or loss; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on October 5, 2011 for a tenancy beginning on November 1, 2011 for the monthly rent of \$750.00 with a security deposit of \$375.00 paid. The tenancy ended on August 31, 2012 as result of the tenant's notice to end tenancy.

Clause 4 of the Tenancy Agreement entitled Rental Period & Terms of Tenancy states the tenancy began on November 1 2011 and continues on as either a month to month tenancy or "not less than 6 months." The form requires that a check be placed in one of the options. In this case neither option is checked off.

The landlord's agent pointed out that in a box under Clause 6 (Rent Payable Monthly) there is the handwritten notation of "12 Months". This Clause identifies how much the

rent is; when it is to be paid and when the landlord is able to increase the rent on the “anniversary” noted the 1st day of November 2012.

Clause 4 also indicates that should the tenant end the tenancy in less than 6 months the tenant must pay a service charge of \$350.00 for change over costs such as advertising; interviewing; and the administration of re-renting. The landlord seeks to recover this amount.

The landlord has also submitted a copy of a separate “Rental Incentive Agreement” dated October 5, 2011 stating the parties agree that in exchange for signing a 12 month lease agreement the tenant will receive a “monthly rental concession in the amount of \$62.00 for the term of the lease.

The incentive also requires the tenant to be on “Auto Debit” and that if the tenant breaks the lease within the specified time the incentives will be due and payable to the landlord. The landlord seeks compensation in the amount of \$620.00 for return of this “concession” for the 10 months of the tenancy.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

From the tenancy agreement that does not indicate whether the tenancy is a month to month tenancy or a 6 month fixed term, I find the landlord has failed to establish the agreement was for a fixed term tenancy of any duration. As such, I find the tenancy established through this tenancy agreement was a month to month tenancy.

As the tenancy was a month to month tenancy I find the landlord cannot charge a service charge for advertising; interviewing; and the administration of re-renting costs by end the tenancy in less than 6 months and is therefore not entitled to this compensation.

In relation to the landlord’s claim to recover the “rental incentive”, I find, that the Rental Incentive Agreement is a separate and distinct agreement with the tenant that provides, in essence, a subsidy to the agreed upon rent in the tenancy agreement. Further, since the tenancy agreement was not a 12 month lease and the tenant ended the tenancy by giving one month’s notice as is required for month to month tenancies that the tenant has not violated the *Act*, regulation or tenancy agreement. Therefore, I find the landlord is not entitled to recover these funds.

Conclusion

For the reasons noted above I dismiss the landlord's Application in its entirety. As I have dismissed the landlord's Application I order the landlord return the full security deposit to the tenant upon receipt of this decision.

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: December 07, 2012.

Residential Tenancy Branch