



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD,

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

This decision deals with two applications for dispute resolution, one brought by the tenant and one brought by the landlords. Both files were heard together.

The landlord's application is a request for a monetary order for \$23,000.00, a request to retain the security deposit of \$1000.00 towards the claim, and a request for recovery of the \$100.00 filing fee.

The tenant's application is a request for a monetary order for \$2000.00 which represents double the \$1000.00 security deposit and a request for recovery of her \$50.00 filing fee.

Background and Evidence

The landlord testified and that:

- This tenancy began on August 1, 2012, however less than 10 days into the lease the respondent's co-tenant/boyfriend committed suicide.
- The tenant phoned and informed him that she would be vacating at the end of the month which is not a proper one month notice.
- The tenant asked if she could be let out of the lease, however at no time did I tell her she could, I said it would be entirely up to the landlords.
- The landlords would have allowed her out of the lease only if they were able to re-rent the unit, and although they diligently attempted to re-rent the unit they were unable to find tenants through the months of September 2012 and October 2012.
- In November 2012 the landlords subsequently decided to take the unit off the rental market and put it up for sale.
- They are therefore reducing the claim to \$4000.00 which is the rental revenue lost for the months of September 2012 and October 2012 while they were attempting to re-rent the unit.
- They are withdrawing the remainder of the claim except for the filing fee because of the fact that they are no longer attempting to re-rent the unit.
- They therefore wish to keep the full security deposit a \$1000.00 and are requesting a monetary order be issued for the remaining \$3000.00 plus the \$100.00 filing fee.

The tenant testified that:

- When her boyfriend committed suicide she phoned the landlords agent and he told her that the landlords would allow her out of the lease at the end of August 2012 and that her security deposit of \$1000.00 would be returned to her at that time.

- At the time of that phone call she had the phone on speakerphone and her mother overheard the conversation and has supplied a sworn declaration in which she states that *“the landlords agent told her that she could absolutely leave the residence at the end of the month and would not be tied to the lease anymore due to the death of her boyfriend. Also the agent told the tenant that her security deposit of \$1000 would be returned at the end of the month”*.
- The tenant is therefore requesting an order that her full security deposit be returned, and that the landlord also pay the \$50.00 filing fee.

Analysis

It is my decision that the tenant has not met the burden of proving that the landlord's agent told her that she would be released from her lease at the end of August 2012 or that her security deposit would be returned.

The landlords agent has given direct testimony denying that he ever agreed to allow the tenant out of the lease or that her security deposit would be returned.

The tenant has supplied a sworn statement from her mother; however her mother can hardly be considered an unbiased witness. Further, the tenant's mother did not appear at the hearing and therefore there was no opportunity for the landlord to cross examine her.

It is my finding that the landlords took reasonable steps to attempt to re-rent the unit, as the landlord has provided ample evidence showing that the unit was advertised on a regular basis and that the price was even reduced at one point.

Therefore since the landlords were unable to re-rent the unit through the months of September 2012 in October 2012 it is my decision that the tenant is liable for lost rental revenue for those months.

As stated by the landlord, the tenant would not be liable for any rent after the month of October 2012, because the landlords took the unit off the rental market.

I will also allow one half the landlords claim for the filing fee, as I have allowed \$4000.00 of the landlord's claim which is below the \$5,000.00 mark at which the filing fee doubles from \$50.00 to \$100.00.

Conclusion

Tenant's application

The tenant's application is dismissed in full without leave to reapply.

Landlord's application

I have allowed \$4050.00 of the landlords claim, and I therefore order that the landlord may retain the full security deposit of \$1000.00 and I have issued a monetary order in the amount of \$3050.00.

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 03, 2012.

Residential Tenancy Branch