



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNR, MNSD

Introduction

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

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and loss of income?

Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy began on or about May 15, 2012. Rent in the amount of \$1000.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$500.00.

The landlord gave the following testimony; the tenancy was a fixed term tenancy from May 1, 2012 for one year, on September 4, 2012 the tenant advised she would be moving out and that she wanted to break the lease, the rent cheque the tenant provided to the landlord came back as "Item Dishonoured", the tenant moved out by September 5, 2012, the landlord posted one advertisement on Kijiji in mid September, was unable to rent the unit for October, seeks the recovery of September and October rent.

The tenant gave the following testimony; tenant disagrees that the tenancy was a fixed term of one year, she believed it to be for six months, on September 1, 2012 she provided the landlords daughter with the rent for the month, on September 4, 2012 the tenant spoke to the landlord about sub-letting the unit and the landlord denied her

request, the tenant then advised that since the landlord was unwilling to allow her to sublet she would need to break the lease due to uncertainty in her job, the landlord advised that she would have to pay cash and that cheques would not be accepted, the tenant put a stop payment on the September rent cheque and provided the landlord with \$500.00 cash and upon agreement with the landlord applied her security deposit as the other half of the rent whereby she would be out of the unit by September 30, 2012, the tenant did not receive a receipt for the \$500.00 payment, the tenant vacated the unit on September 5, 2012 as she found a more affordable place to live.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant gave testimony that on September 4, 2012 she paid half of the rent in cash and relinquished her security deposit to make up the other half but did not receive a receipt. She then vacated the unit the following day. When I questioned the tenant as to why she would pay the full month's rent and then leave the following day she was evasive and offered two versions as to why this occurred. I find the tenant to be contradictory in regards to this portion of her testimony. The landlord was clear and consistent that he had never requested or received any cash payments or any arrangements had been made in regards to the relinquishment of the security deposit. The landlord provided documentation of the returned September rent cheque. I am satisfied that the landlord has proven the tenant did not pay the September rent and I find the landlord is entitled to the recovery of \$1000.00.

The landlord is also seeking the recovery of loss revenue for the month of October. The landlord stated that he posted "one ad sometime in mid September I think". Under the Act, when a party is seeking to make a claim for loss or damage they bear a responsibility to mitigate loss as much as reasonably possible. Posting one advertisement ten days after the tenant moved out and not renewing or attempting any other means is not a reasonable amount of mitigation. Based on the above I do not find that the landlord is entitled to the recovery of the loss of revenue for October.

As for the monetary order, I find that the landlord has established a claim for \$1000. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the \$500.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$550.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$550.00. The landlord may retain the security deposit.

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: February 05, 2013

Residential Tenancy Branch

