



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Landlord said he served the Tenant with the Application and Notice of Hearing (the "hearing package") by personal delivery mail on January 16, 2013. Based on the evidence of the Landlord, I find that the Tenant was served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there a loss or damage and if so is the Landlord entitled to compensation?
4. Is the Landlord entitled to keep the Tenant's security deposit?

Background and Evidence

This tenancy started on October 1, 2012 as a fixed term tenancy with an expiry date of March 31, 2013. Rent was \$1,200.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$600.00 and a pet deposit of \$300.00 on September 22, 2012.

The Tenant said she gave the Landlord a written 1 month notice on November 30, 2012, by personal delivery that indicated they were moving out of the rental unit on January 1, 2013. The Landlord said he did not receive that notice and he said he did not know when the Tenant was moving out. The Tenant said she moved out January 1, 2013 and she did an inspection of the rental unit with the Landlord on that day. The Tenant said

she had spoken with the Landlord a number of times in December, 2012 about her moving out and when a move out inspection could be done.

The Landlord said that he rented the unit as at February 15, 2013 so he is amending his application for lost rental income for January, 2013 for \$1,200.00 and for lost rental income for part of February, 2013 in the amount of \$600.00. As well the Landlord said he is reducing his claim for his time and efforts to re-rent the unit to \$300.00 from \$600.00 that he applied for. The Landlord said his total claim is \$2,100.00. The Landlord said that he advertised the rental unit on December 21, 2012 and then again on January 17, 2013. The advertisement listing indicates the rental unit is available for February 1, 2013 at a rental of \$1,150.00.

The Tenant said she gave the Landlord her forwarding address and a request to return her deposits in writing to the Landlord in person on January 8, 2013 and the Tenant said the Landlord did not say anything about retaining the deposits. The Tenant said the next communication from the Landlord was his application and hearing package dated January 16, 2013.

Analysis

Section 26 says a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

Section 45 of the Act says a Tenant may end a fixed term tenancy not earlier than the date specified in the tenancy agreement and it must be with written notice at least one month prior to the date that rent is payable or with the agreement of the Landlord.

Further for a monetary claim for damage or loss to be successful an applicant must prove a loss actually exists, prove the loss happened solely because of the actions of the respondent in violation to the Act, the applicant must verify the loss with receipts and the applicant must show how they mitigated or minimized the loss.

I accept the Tenant's testimony and evidence that the Tenant gave the Landlord a written notice to end the tenancy for January 1, 2013 on November 30, 2012, but the tenancy agreement stated the fixed term tenancy would end on March 31, 2013. As a result the Tenant is responsible for the rent on the unit until the expiry date of the tenancy agreement or until a new tenant moves in. As well the Landlord must mitigate or minimize his loss as soon as he knows the Tenant was moving out. The Landlord said he was not sure when the Tenant was moving out, but he did advertise the unit on December 21, 2012 and January 17, 2013 for an occupancy date of February 1, 2013. Consequently I find it is most probable that the Landlord did receive the Tenant's notice on November 30, 2012 and the Landlord was aware that the Tenant was moving out on

January 1, 2013. As a result the Landlord did not mitigate his losses by advertising the unit earlier than December 21, 2012 and as he advertised the unit for occupancy as of February 1, 2013; I find the Landlord is only entitled to the loss rental income for the period of February 1, 2013 to February 15, 2013 in the amount of \$600.00.

Further the Landlord has claimed \$300.00 for his time and the cost to advertise the unit. The Landlord has not provided any receipts for the advertising costs therefore he has not proven or verified this loss. I accept the Landlord's testimony that he showed the property a number of times and there were costs involved in doing so; therefore I find the Landlord has established grounds to be awarded \$150.00 for his time and expenses to re-rent the unit because the Tenant breached the fixed term of the tenancy agreement.

As the Landlord has been partially successful in this matter, he is also entitled to recover from the Tenant the \$50.00 filing fee for this proceeding. I order the Landlord pursuant to s. 38 and s. 72 of the Act to keep \$800.00 of the Tenant's security and pet deposit in full settlement of the Landlord's application. This amount represents the loss of rental income for February, 2013 in the amount of \$600.00, the Landlord's expenses to re-rent the unit of \$150.00 and the filing fee of \$50.00.

Further I order the Landlord to return the remaining \$100.00 of the Tenant's security and pet deposits to the Tenant forthwith.

Conclusion

I order the Landlord to retain \$800.00 of the Tenant's security and pet deposits.

I order the Landlord to return \$100.00 of the Tenant's security and pet deposits forthwith.

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: March 27, 2013

Residential Tenancy Branch

