



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC MNSD FF

Introduction

This hearing was convened in response to an application by the landlord, filed January 03, 2013, for a Monetary Order to recover loss of revenue for January 2013, loss of unpaid rent for November and December 2012, and costs associated with re-renting the rental unit in mitigation of revenue losses, and an Order to retain the security deposit as set off in partial satisfaction of the monetary claim. The application is inclusive of recovery of the filing fee associated with this application. Therefore, the landlord applies for Orders under the Residential Tenancy Act (the Act) as follows:

1. A Monetary Order for unpaid rent or loss under the agreement - Section 67;
2. An Order to retain the security or pet damage deposit - Section 38
3. An Order to recover the filing fee for this application - Section 72.

Both parties attended the hearing and were given opportunity to discuss their dispute, settle their dispute, and present all relevant evidence and testimony in respect to the claims and to make relevant prior submission to the hearing and fully participate in the conference call hearing. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The tenant acknowledged receipt of the landlord's evidence.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

The burden of proof rests with the applicant (landlord) to prove their claims.

Background and Evidence

The undisputed testimony of the parties is as follows. The tenancy began September 15, 2011 as a fixed term tenancy ending in 2014. The tenancy ended when the tenant vacated December 15, 2012. Rent in the amount of \$1720.46 was payable in advance on the first day of each month starting November 01, 2012 as per the landlord's Notice of Rent Increase dated July 29, 2012, increasing the rent by \$70.46. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$825.00, which the landlord still holds. The landlord received the tenant's written notice to vacate (Notice to End) on December 07, 2012 for the tenant to vacate the rental unit by January 01, 2013. The landlord provided evidence they began advertising for new tenants on the same date. The tenant acknowledged they did not pay the rent increase for November and December 2012 as they did not determine it to be valid given they had a 3 year fixed term tenancy agreement.

The landlord testified that upon receiving the tenant's Notice to End they immediately went about to secure a new tenant and testified they did so for February 2013. The landlord provided evidence of their attempts to re-rent the rental unit starting December 07, 2013. The landlord claims that at first they did not receive many enquiries due to the holiday season and the tenant's late Notice to vacate, but that in early January 2013 enquiries increased. The landlord provided a list of 26 potential tenants who answered the landlord's advertisements: including their telephone numbers, dates and time from January 04 to 31, 2013. The landlord claims they were able to secure a *qualified* new tenant for February 15, 2013. The tenant claims the landlord had new tenants in the rental unit before December 31, 2012. The landlord responded that the tenant may have encountered a potential tenant, but that many potential tenants did not qualify for lack of references or other hindrances.

The landlord seeks loss of revenue for January 2013, unpaid rent for November and December 2012, advertising costs, and \$173.97 for their cost in time spent to secure new tenants.

Analysis

Based on the testimony of the landlord and the tenant, and on the preponderance of all the document and testimonial evidence I have reached a Decision.

I find that while the Act requires that a tenant may not give a Notice to End a tenancy earlier than the date specified in a fixed term tenancy agreement, the Act does not attach a penalty for failing to do so, or automatically entitles the landlord to rent for the month(s) following. There is no provision in the Act whereby tenants who vacate before

the end date of a fixed term will be automatically held liable for loss of rent revenue for the month(s) following the month in which they give their notice. However, **Section 7** of the Act does provide as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

I find the tenant breached the tenancy agreement and the Act by ending the tenancy earlier than the prescribed fixed term, and in the process did not provide the landlord sufficient notice to end the tenancy for the landlord to mitigate their loss in rent for the month of January 2013. I also find the landlord gave the tenant a valid Notice of Rent Increase effective November 01, 2012, but the tenant did not pay the increase for the months of November and December 2012. I further find the landlord has provided sufficient evidence to prove they took reasonable steps to mitigate or minimize their potential revenue losses and that their claimed costs to do so, on the face of the evidence, are themselves reasonable. Therefore, I find that the landlord has sufficiently met the test established by Sections 7(1) and (2) of the Act. I grant the landlord their claim and the following calculation for a Monetary Order the security deposit will be off-set from the award made herein.

Loss of revenue for January 2013	\$1720.46
Unpaid rent for November and December 2012 (\$70.46 X 2)	\$140.92
Advertising costs - receipt	\$131.04
Time spent / cost to mitigate losses of revenue	\$173.97
Filing fee to landlord for cost of this application	\$50.00
<i>Minus: tenant's security deposit</i>	<i>-\$825.00</i>
Total Monetary Award to landlord	\$1391.39

Conclusion

I Order that the landlord may retain the security deposit \$825.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance

due of **\$1391.39** If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision and Order is final and binding on both parties.

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 26, 2013

Residential Tenancy Branch