



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties have attended the hearing and have confirmed receipt of the notice of hearing package and the submitted documentary evidence submitted by the other party, I am satisfied that both parties have been properly served.

At the beginning of the hearing the Landlord clarified that the monetary claim was for \$1,450.00 for the loss of rental income for month of February.

The Tenant clarified during the hearing that the unit number for his address was for #307 and not #108 as listed on the Application. The Landlord's Application shall be amended to reflect this.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

This Tenancy began on May 1, 2012 on a fixed term tenancy ending on April 30, 2013 as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$1,450.00 payable on the 1st of each month and a security deposit of \$725.00 was paid.

Both parties agreed in their direct testimony that the Tenant vacated the rental unit on January 25, 2013 and returned possession of the unit to the Landlord.

The Landlord seeks a monetary claim for \$1,450.00 for the loss of rental income for February 2013 for breaching the fixed term tenancy agreement.

The Tenant disputes this claim. Both parties agreed that the Tenant emailed the Landlord with the intent to sublet the rental unit for the remaining portion of the fixed term tenancy agreement and requested information on what criteria the Landlord would require. The Tenant refers to an email reply by the Landlord on December 29, 2012 that states, "Hi- will have to get back to you in a few days, but shouldn't be a problem to get out of the lease early rather than sublet I will be in touch after the new years." Both parties agreed that the Landlord began advertising the rental unit on January 2, 2013 for rent beginning February 1, 2013. The Tenant states that the Landlord listed the rental for \$1,500.00 on a 1 year lease which is \$50.00 more per month than the Tenant's fixed term tenancy. The Tenant argues that there was no reply to the Tenant's inquiries regarding the criteria for a sublet. The Tenant argues that the Landlord preferred to have a new tenant lease as opposed to a sublet agreement. The Tenant has provided in his documentary statement that he informed the Landlord of his intent to move-out effective January 31, 2013. The Landlord states that "the lease would be broken only after a new tenancy agreement was signed." The Landlord also states that in an email dated January 7, 2013 that a prospective new tenant changed their mind and no longer wished to rent the unit. The Landlord states that the Tenant was not actively seeking a sublet at this time, but that the Landlord was advertising and showing the unit and trying to re-rent the unit. The Landlord has provided email correspondence of a referral on January 11, 2013 of a possible sublet candidate and the details of the circumstances. The Landlord has also provided copies of the emails that state that the Tenant was actively pursuing this sublet candidate until it unsuccessful when the Tenant was informed on January 23, 2013. The Tenant indicated that he would still be vacating the rental unit on January 26, 2013.

Analysis

Residential Tenancy Policy Guideline #30 states that "During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties."

I find that the Landlord has established a claim for the monetary claim of \$1,450.00 in the loss of rental income for February 2013. I am satisfied based upon the evidence provided that the Tenant breached the fixed term tenancy by ending it prematurely

without permission of the Landlord. I find that the email correspondence provided does not constitute an agreement by the Landlord to terminate the fixed term tenancy. Throughout all of the email correspondence submitted by the Landlord between the two parties it has been shown that the Landlord was attempting to mitigate any possible losses by advertising the unit for rent as well as awaiting the Tenant's news of a possible sublet candidate. The evidence shows that the Landlord even provided referrals to the Tenant in an attempt to sublet the rental unit as shown by the correspondence to the Strata Council from the Landlord and Tenant for an exemption for lease agreements less than 1 year in length. The Tenant failed to provide any sublet candidates for approval by the Landlord. The Landlord has shown that notice was given to the Tenant that until a new lease agreement was signed for a new tenant or for an approved sublet that the Tenant was responsible for the fixed term tenancy on January 7, 2013, January 11, 2013 and January 26, 2013 in email correspondence between the two parties. Although the Tenant did not give formal written notice to vacate the rental unit, both parties accepted the Tenant's intention to vacate the rental unit for January 31, 2013. The Tenant indicated as such in his January 7, 2013 notifying the Landlord that he had booked movers for January 25, 2013.

The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$725.00 security deposit in partial satisfaction and I grant a monetary order for \$775.00. 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 \$775.00.
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: April 26, 2013

Residential Tenancy Branch