



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Plan A Real Estate Services Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNSD

Introduction

This hearing was convened in response to an application by the landlord under *the Residential Tenancy Act* (the Act) to retain the security deposit in satisfaction of revenue losses for tenant's breach of the tenancy agreement.

Both parties participated in the hearing with their submissions, document evidence and testimony during the hearing. The landlord acknowledged receiving the evidence of the tenant by e-mail and that this submission was acceptable and understandable by the landlord. The landlord provided evidence they also sent the tenant by registered mail on March 20, 2013 but that the tenant failed to retrieve the mail from their postal outlet. Section 90 of the Act deems the tenant received the evidence on the 5th day after the registered mail was sent – which in this matter renders the landlord's evidence late. None the less, the landlord and tenant were each given opportunity to orally provide their respective evidence and were given opportunity to respond to it. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of revenue?

Background and Evidence

The undisputed relevant testimony in this matter is that the tenancy started December 01, 2012 as a fixed term tenancy for 12 months for a fully furnished rental unit. Under the tenancy agreement rent in the amount of \$2300.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security

deposit from the tenant in the amount of \$1150.00. The tenant returned the keys effectively vacating the unit December 17, 2013. As a result the landlord claims they lost rent revenue for the following month of January 2013 , but were able to re-rent the unit for February 2013.

Several days after the start of the tenancy the tenant advised the landlord there was an odour of cigarette smoke in the rental unit, and that they had found some cigarette ends in the unit. The tenant provided a photograph of cigarette ends. The landlord's representative attended the unit but could not detect the odour purported by the tenant. Both parties agree that the tenancy agreement does not allow smoking in the unit and the tenant claims they rented the unit for this very reason, as they are asthmatic – but claim that the previous tenant smoked in the unit. None the less the parties agree the landlord responded immediately to the tenant's concerns of smoke odour over the immediate 4 days: with additional professional cleaning and cleaning of walls, carpeting, sofa, mattress, and blinds; and, in addition the landlord purchased an air filter for the rental unit. The tenant claims the landlord's efforts did not fully resolve their complaint and the parties disagreed on a repaint of the unit. The parties agree the landlord also addressed the tenant's request to move to another rental unit of the landlord, and arranged for their viewing but that the parties did not agree on this course. The tenant found new accommodations on their own and verbally informed the landlord they were vacating, and did so – returning the keys December 17, 2013. The landlord testified they immediately sought to re-rent the unit the following day, advertising online. The landlord testified that a week before Christmas and 18 days into any month makes it very difficult to find a new tenant for the approaching month – but they managed to do so on December 28, 2012 - for the start of February 2013.

Analysis

On preponderance of all the evidence in this matter, I have reached a Decision upon the following findings.

I find the parties entered into a fixed term tenancy agreement and the tenant ended the tenancy without providing the landlord with the prescribed Notice to end the tenancy in accordance with **Section 45** of the Act, which in relevant part states as follows,

Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

I find the tenant informed the landlord of a concern with the rental unit and the landlord immediately responded to correct the issue but the parties failed to agree. I find the tenant failed to provide the landlord with legal notice under the Act to end the tenancy as required by Section 45.

Section 7 of the Act states as follows:

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.

(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.

As a result of the tenant's non compliance with the tenancy agreement or the Act, I accept the landlord's evidence that under the circumstances with which they were presented the landlord took reasonable steps to minimize and avert future losses of revenue for themselves and a greater liability for the tenant, which resulted in securing a new tenancy for February 01, 2013. On the evidence provided in this matter, I find the landlord has met the above test for loss. I find the landlord has provided sufficient evidence to support their claim and as a result are owed compensation for loss - only limited in the amount by the landlord's claim equivalent to ½ month's rent for January 2013 – the amount of the security deposit of \$1150.00. Therefore, **I grant** the landlord their request on application *as full and final compensation for loss* in this matter, without leave to reapply.

Conclusion

I Order that the landlord may retain the security deposit of this tenancy of \$1150.00 in full satisfaction of their claim.

This Decision 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: April 02, 2013

Residential Tenancy Branch