



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Coldwell Banker Slegg Realty
and [tenant name suppressed to protect privacy]

REVIEW DECISION

Dispute Codes: MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

A hearing was originally scheduled to occur on March 11, 2013. The tenant appeared, the landlord did not, and by way of decision dated March 11, 2013 the landlord's application was therefore dismissed. Thereafter, the landlord applied for review consideration. In the result, by way of decision dated April 30, 2013, the review succeeded, this present hearing was scheduled, and the decision of March 11, 2013 was suspended pending the outcome of this present hearing.

Pursuant to a written tenancy agreement, the fixed term of tenancy is from May 1, 2012 to April 30, 2013. Monthly rent of \$1,200.00 is due and payable in advance on the first day of each month, and a security deposit of \$600.00 was collected.

By letter dated November 6, 2012, the tenant gave notice to end tenancy effective December 1, 2012. The landlord's agent testified that he received this letter on or about November 13, 2012. Subsequently, the tenant provided his forwarding address by letter dated December 1, 2012.

The landlord began on-line advertising for new renters on November 15, 2012, and also later advertised by way of a local newspaper. It is understood that by word-of-mouth, the tenant also undertook to assist in finding new renters for the unit. Ultimately, new renters were found effective from February 1, 2013.

During the hearing the tenant claimed that the unit was too noisy, and that reasons for ending the tenancy specifically included noise disturbance from the operation of the elevator. However, there is no application before me from the tenant in which he seeks any remedy for an alleged breach of the right to quiet enjoyment.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

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.

Section 7 of the Act addresses **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.

Based on the documentary evidence and testimony, I find that the tenant's manner of ending the fixed term of tenancy does not comply with the above statutory provisions. Further, I find that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. In the result, I find that the landlord has established entitlement to a claim of **\$2,450.00**, as follows:

\$1,200.00: *loss of rental income for December 2012* / **\$1,200.00**: *loss of rental income for January 2013* / **\$50.00**: *filing fee*

I order that the landlord retain the security deposit of **\$600.00**, and I grant the landlord a **monetary order** under section 67 of the Act for the balance owed of **\$1,850.00** (\$2,450.00 - \$600.00).

Section 82 of the Act speaks to **Review of director's decision or order**, in part:

82(2) The director may conduct a review

(c) by holding a new hearing.

(3) Following the review, the director may confirm, vary or set aside the original decision or order.

Following from all the above, the decision dated March 11, 2013 is hereby set aside.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,850.00**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

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: May 29, 2013

Residential Tenancy Branch

