



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 hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order pursuant to Section 67 for loss of income, liquidated damages and the filing fee. The landlord also applied to retain the security and pet deposits in satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, liquidated damages, the filing fee and to retain the security and pet deposits in satisfaction of this claim?

Background and Evidence

On February 25, 2013, the parties entered into a fixed term tenancy agreement with an effective start date of April 01, 2013 and an end date of March 31, 2014. The rent was set at \$1,235.00 due on the first of each month. The tenant paid a security of \$617.50 and a pet deposit of \$617.50. The landlord filed a copy of the tenancy agreement. A clause in the agreement requires the tenant to pay \$617.50 if she moves out prior to the end date of the fixed term.

On March 22, 2013, the tenant informed the landlord that she was not going to be moving into the rental unit. The landlord uses the services of a leasing agent who started advertising the availability of the unit and showing the unit. Despite these efforts, a tenant was not found for April 01, 2013. The landlord has applied for a monetary order for the loss of income that he suffered for April 2013, for liquidated damages of \$617.50 and for the filing fee \$50.00.

Analysis

Based on these facts and pursuant to section 16 of the *Residential Tenancy Act*, I find that the landlord and tenant had entered into a binding tenancy agreement when they signed a contract on February 25, 2013.

Section 16 of the *Act* states that the rights and obligations of a landlord and tenant take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

In this case, the tenant entered into a tenancy agreement, but failed to give the landlord adequate notice to end the tenancy. The landlord made efforts to mitigate his losses by advertising the availability of the suite but did not find a tenant for April and therefore suffered a loss of income for this month.

Residential Tenancy Policy Guideline #3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Therefore, I find that the landlord is entitled to the income that he lost for the month of April 2013 in the amount of \$1,235.00. Since the tenant signed the lease, in agreement of the terms of the lease, she must also pay \$617.50 for liquidated damages. The landlord has proven his case and therefore I find that the landlord is entitled to the filing fee of \$50.00.

Overall the landlord has established a claim of \$1,902.50. I order that the landlord retain the security deposit of \$617.50 and the pet deposit of \$617.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$667.50. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security and pet deposits and I grant the landlord a monetary order in the amount of **\$667.50**.

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: June 27, 2013

Residential Tenancy Branch

