



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid and/or loss of rent and authorization to retain the security deposit. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recover unpaid and/or loss of rent from the tenant?
2. Are the landlords authorized to retain the security deposit?

Background and Evidence

The parties executed a written tenancy agreement on March 15, 2013 and the tenant gave the landlord's agent a security deposit in the amount of \$800.00 on that date. The tenancy was set to commence on April 1, 2013 for a fixed term set to expire on September 30, 2013 for the monthly rent of \$2,300.00. The tenant did not take possession of the unit. The landlord re-rented the unit effective May 1, 2013.

By way of this application, the landlords are seeking to recover unpaid and/or loss of rent for the month of April 2013.

The landlord submitted that an email dated March 22, 2013 was received from the tenant's relative indicating the tenancy would not continue. The landlord responded by requesting that the tenant communicate with the landlord. The tenant's niece then communicated to the landlord that the tenancy would proceed. The landlord requested the tenant confirm whether or not the tenant would be taking possession of the unit. The landlord determined that the tenancy would not be continuing and the landlord

communicated to the tenant that the security deposit would be returned if the landlord was able to re-rent the unit for April 2013.

The tenant testified that she signed the tenancy agreement on March 15, 2013 because her daughter liked the rental unit but after discussing it with her family members her family members were of the opinion the rental unit was too expensive. In addition, the tenant's brother became seriously ill and the tenant had to fly to another city for two weeks. The tenant stated that she communicated to the landlord that he should find a new tenant for the rental unit. The tenant submitted that the landlord had stated he would return the security deposit if he re-rented the unit.

The tenant's agent suggested that the landlord indicated he would return the security deposit to the tenant for compassionate reasons. The landlord denied saying such a thing. During the hearing, the landlord read from the email sent to the tenant whereby landlord informed the tenant that he would return the security deposit if he was able to re-rent the unit for April 2013.

On June 3, 2013 a letter was sent to the landlord by the tenant's advocate seeking return of the security deposit. The landlord filed this Application for Dispute Resolution the following day.

Analysis

Where one party violates the Act, regulations, or tenancy agreement, the other party may recover the losses they suffer as a result of that party's violation. The party making the claim is obligated to make reasonable efforts to mitigate their losses.

Under section 16 of the Act, the rights and obligations of a landlord and tenant take effect from the time the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. In this case, the parties executed a tenancy agreement and the tenant paid a security deposit on March 15, 2013. Accordingly, I find the parties were bound by the terms of the tenancy agreement and their respective rights and obligations under the Act starting March 15, 2013.

Under the Act, a tenant is required to pay rent in accordance with their tenancy agreement, unless the tenant has a legal right to withhold rent. Under the tenancy agreement the parties entered into, the tenant was required to pay rent starting April 1, 2013 and the tenant failed to do so; thereby, violating both the Act and tenancy agreement.

As the tenant was in a fixed term tenancy, the tenant had a potential liability to pay rent for the remainder of the fixed term; however, I am satisfied the landlord took reasonable action to mitigate the loss of rent. I find loss of rent for only one month to be very reasonable given the insufficient notice the tenant gave to the landlord. Therefore, I grant the landlords' request to recover loss of rent from the tenant for the month of April 2013.

I further award the \$50.00 filing fee to the landlord. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent due to the landlord.

In light of the above, I provide the landlord with a Monetary Order for the balance of \$1,550.00 [$\$2,300.00 + \$50.00 - \800.00]. To enforce the Monetary Order it must be served upon the tenant and may be filed in Provincial Court (Small Claims) to enforce as an Order of that court.

Conclusion

The landlords have been authorized to retain the tenant's security deposit and has been provided a Monetary Order for the balance of \$1,550.00 to serve and enforce as necessary.

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: October 03, 2013

Residential Tenancy Branch

