



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for damage or loss under the Act, Regulation or tenancy agreement / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony.

Despite service of the application for dispute resolution and notice of hearing (the "hearing package") by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mail, and the Canada Post website informs that the item was "successfully delivered."

Issue(s) to be Decided

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

Background and Evidence

Pursuant to a written tenancy agreement, the 6 month fixed term of tenancy was from April 1 to September 30, 2013. Monthly rent of \$2,000.00 was due and payable in advance on the first day of each month, and a security deposit of \$1,000.00 was collected. While a copy is not in evidence, the landlord's agent testified that a move-in condition inspection report was completed with the participation of both parties.

By way of e-mail dated June 3, 2013, the tenant gave notice to end tenancy effective at the end of June 2013. The landlord's agent testified that the tenant paid rent to the end of July 2013. The landlord's agent also testified that a move-out condition inspection report was completed with the participation of both parties, and that the tenant provided his forwarding address on the report. A copy of this report is not in evidence.

The landlord's agent testified that on-line advertising for new renters began immediately after receipt of the tenant's notice. Ultimately, new renters were found effective August 1, 2013. However, the monthly rent agreed to with the new renters was \$1,800.00, or \$200.00 less than the amount agreed to with the subject tenant. The landlord seeks to recover the \$200.00 difference in rent for each of the 2 remaining months of the fixed term which are August and September 2013, in addition to the \$50.00 filing fee.

Analysis

Section 45 of the Act addresses **Tenant's notice**, and provides in part:

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 speaks to **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 affirmed / undisputed testimony of the landlord's agent, I find that the tenant's manner of ending the fixed term tenancy did not comply with the above statutory provisions. I further find that the landlord undertook to mitigate the loss of

rental income by advertising for new renters in a timely fashion. Accordingly, I find that the landlord has established entitlement to compensation of **\$450.00**:

\$200.00: *loss of rental income for August (\$2,000.00 - \$1,800.00)*

\$200.00: *loss of rental income for September (\$2,000.00 - \$1,800.00)*

\$50.00: *filing fee*

Section 72 of the Act addresses **Director's orders: fees and monetary orders**, in part as follows:

72(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

Following from all the above, I order that the landlord withhold **\$450.00** from the tenant's security deposit of \$800.00, and I further order that the landlord repay the balance of the security deposit in the amount of **\$350.00** to the tenant (\$800.00 - \$450.00)

Conclusion

The landlord is hereby ordered to withhold **\$450.00** from the tenant's security deposit.

The landlord is hereby ordered to repay to the tenant the balance of the security deposit in the amount of **\$350.00**.

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: November 07, 2013

Residential Tenancy Branch

