



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Baywest Management Corporation (Agent)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The original hearing was conducted via teleconference and was attended by two agents for the landlord and the tenant. The reconvened hearing, also conducted via teleconference, was attended by the same agents; the tenant and his legal counsel.

The hearing was originally convened on December 23, 2013 but at the request of the tenant and with agreement by the landlord's agents I granted an adjournment to allow the tenant to obtain legal counsel.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a tenancy agreement signed by the parties on July 26, 2013 for a month to month tenancy beginning on August 1, 2013 for a monthly rent of \$775.00 less \$250.00 for a total rent of \$525.00 due on the 1st of each month with a security deposit of \$262.50 paid. The tenancy agreement stipulates any rent paid late will be subject to a late payment fee of \$25.00.

The landlord also submitted a copy of a Resident Caretaker Agreement signed by the parties on July 26, 2013 that stipulated, among other things, that while employed as the Resident Caretaker the "market rent will be reduced by \$250.00 per month".

The parties agree the tenant later decided not to accept the position or to move in to the rental unit. The landlord submits that it was by way of email received from the tenant on August 7, 2013 that they were made aware he was not taking the rental unit. The email

also stipulates that the landlord may retain the security deposit “as full payment for not going forward with renting the apartment.”

The landlord seeks compensation in the amount of \$800.00 less the security deposit for unpaid rent of \$775.00 and a late payment fee of \$25.00.

The tenant submits that because the tenancy was related to his employment he should not be held responsible for the payment of rent since he never started his employment with the landlord. In the alternative, the tenant submits that if he is held responsible for the payment of rent it should be for the reduced amount of \$525.00 as that would be the loss suffered by the landlord.

Analysis

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

As such, in the case before me I find that as the parties entered into a tenancy agreement on July 26, 2013 for which a security deposit had been paid by the tenant the tenant is obligated to provide the landlord with notice to end his tenancy in accordance with the requirements of the *Act*, regardless of his employment status with the landlord.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy 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.

As there is no evidence before that the landlord was in breach of a material term of the tenancy agreement or that the tenant had provided written notice to the landlord of such a breach and gave the landlord a reasonable time to correct the situation I find the tenant was required to provide the landlord with notice to end his tenancy that was compliant with Section 45(1).

As the tenant failed to do so I find the tenant has breached the *Act* and the landlord has suffered a loss resulting from that breach.

As to the value of that loss I am not satisfied with the tenant's position that the loss should be restricted to the amount of rent less the \$250.00 reduction granted through the employment contract because that is the only loss realized by the landlord.

However, as the tenancy agreement itself reads that "Total Rent and Fees" are to be \$525.00 and the security deposit paid by the tenant was \$262.50 or ½ of \$525.00 I find that the landlord has created a tenancy agreement stipulating that the rent is \$525.00 not \$775.00.

If the rent had been listed solely as \$775.00 and the security deposit were equal to ½ of \$775.00 I would find that rent for this tenancy would have been \$775.00 but based on the way the landlord has introduced the reduction into the tenancy agreement I find the rent owed by the tenant is \$525.00.

I also find that the landlord is entitled to compensation for a late payment fee of \$25.00 as allowed in the tenancy agreement.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$600.00** comprised of \$525.00 rent owed; \$25.00 late payment fee and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$262.50 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$337.50**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: January 22, 2014

Residential Tenancy Branch

