



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MAINSTREET EQUITY CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover loss of revenue and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim. Both, the landlord and the tenant, were represented in today's hearing and each participated with their submissions, testimony and questions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Background and Evidence

The tenancy began in March 2013 and ended September 30, 2013. Rent in the amount of \$900.00 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$450.00 and retained in trust. The landlord received the tenant's written notice to vacate (Notice to End) on September 03, 2013 for the tenant to vacate the rental unit September 30, 2013. The landlord provided a copy of the tenant's Notice to Vacate dated September 03, 2013. The landlord testified they are requesting rent for the month of October 2013 due to the tenant's late notice to vacate and the landlord's inability to re-rent the unit for October 01, 2013. The landlord further testified and submitted that their efforts to re-rent the unit for October 01, 2013 consisted of their usual advertising outlets, including advertising units on Craigslist the same day as they received the tenant's Notice to End on September 03, 2013. The landlord testified they were not able to re-rent the unit for October 01, 2013 because of a typically slow period of the year - a "slow market". The landlord testified they received no enquiries for the rental unit in September 2013 as was the case for other units. However, the landlord was able

to sign a new tenancy agreement November 01, 2013. The landlord further testified that they did not know if the outcome in this matter would have differed had the tenant provided Notice to End 3 days earlier.

The landlord's monetary claim is for \$900.00 for October 2013 rent. The parties agree that prior to the end of August 2013 the tenant had verbalized to the landlord their intention to vacate at the end of September 2013, but had not provided the landlord with a written Notice. The tenant argued that the landlord's claim is unfair because despite their late Notice to End they had verbally notified the landlord.

Analysis

Based on the testimony of the parties, and all the evidence before me, I find that while the Act requires tenants to give one *full month's* notice that they are vacating, the Act does not attach a penalty for failing to do so or automatically entitle the landlord to loss of revenue. That is, there is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice. However, Section 7 of the Act does provide as follows:

7. 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.
- 7(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.

In this case, the landlord argues that a loss of revenue occurred from the tenant's non-compliance with the Act, by their provision of a late Notice to Vacate. I find that the landlord may have made reasonable efforts to minimize their losses by advertising the rental unit immediately, thereby meeting the second part of the test established in section 7(2). However, the landlord has not met the first part of the test established in section 7(1) in that they have not proven on the balance of probabilities that their loss resulted from the tenant's non-compliance with the Act. Rather, the landlord testified that their loss resulted from a lack of interest in this rental property due to a "slow market". The landlord has not provided that the outcome would have differed had the tenant been in compliance with the Act by submitting their Notice to End 3 days earlier. As a result, the landlord's claim for loss of revenue for October 2013 **is dismissed**, without leave to reapply.

In this application the landlord requested the retention of the security deposit in partial satisfaction of their monetary claim. Because the landlord's claim has been dismissed without leave to reapply it is appropriate that I Order the tenant's security deposit returned to the tenant in the original amount of \$450.00.

Conclusion

The tenant is being given a Monetary Order in the amount of **\$450.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an order of that Court.

This Decision is final and binding on both parties.

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 21, 2014

Residential Tenancy Branch