



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 was a hearing with respect to the landlord's application for a monetary award and an order to retain the security deposit in partial satisfaction of the award. The hearing was conducted by conference call. The landlord and the tenant called in and participated in the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary award for loss of rental income and if so, in what amount?

Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

The rental unit is an apartment in Whistler. The tenancy began in December, 2012 for a fixed term ending December 31, 2013. The monthly rent was \$1,000.00, payable on the first of each month. The tenant paid a security deposit of \$500.00 on December 7, 2012.

On September 23, 2013 the tenant telephoned the landlord and told him that he intended to move out of the rental unit on October 1, 2013. The landlord told the tenant that he must be out by noon on the 1st and must hand over the keys to the landlord's real estate agent. The tenant moved out on October 1st and returned the keys as directed. On October 3, 2013 the landlord filed this application for dispute resolution and claimed loss of revenue in the amount of \$3,000.00, being the amount due for rent for the remainder of the fixed term. At the hearing the landlord testified that he was unable to re-rent the unit for any part of October, but he secured a new tenant to rent the unit commencing November 1, 2013. The landlord said at the hearing that he was

seeking only an order to retain the tenant's \$500.00 security deposit in full satisfaction of his claim for lost rent for October.

The tenant referred to an e-mail received from the landlord dated September 29, 2013, wherein the landlord said: "... All you have to do, to get your damage deposit back is to be out of there by 12:00 noon Oct 1, 2013, leaving the unit clean and tidy. Provide forwarding address to receive a cheque and arrange to meet my agent (name, contact info), for walk through inspection, and the return of all keys to the premises. I will be up there on Thursday to go through the place."

The tenant took the position that the landlord's e-mail constituted a binding commitment on the landlord's part to return the security deposit to him. The tenant also said that given the rental market at Whistler at the time, he would have been able to find a prospective tenant to rent the unit starting in October. The landlord said that the e-mail meant only that he was prepared to discuss the return of the tenant's deposit; after he sent the e-mail he received advice from the Residential Tenancy Branch about his rights and obligations and then filed this application to claim loss of rent and to retain the deposit.

Analysis

If the landlord's e-mail constituted a commitment or promise to return the tenant's security deposit, it was made without consideration and I do not find that it is now binding on the landlord, however, even if I am wrong on this point, the commitment to return the deposit did not preclude the landlord from making a monetary claim against the tenant for lost rental income for the month of October and pursuant to section 72 of the *Residential Tenancy Act* it is open to me to set off any award granted to the landlord against the amount of the security deposit that he holds. The tenant said at the hearing that if asked, he could have located a tenant for the month of October; but that is only conjecture. The tenant gave the landlord seven days' verbal notice. The landlord succeeded in re-renting the unit for November and thereby mitigated his damages to the benefit of the tenant. I do not find the tenant's argument, which amounts to an assertion that the landlord failed to act properly in seeking to promptly re-rent the unit, to have merit. The tenant did not submit any documentary or other evidence to support his position and I find that it is mere speculation. The landlord has limited his claim in this proceeding to a claim for what amounts to a half month's rent only, even though it was open to him to claim a monetary award for the rent for full month of October plus the filing fee for this application.

Conclusion

Pursuant to the landlord's request at the hearing, I grant the landlord a monetary award in the amount of \$500.00 for loss of rental income for October and I order that the landlord retain the \$500.00 security deposit that he holds in full and final satisfaction of this claim. The landlord did not request recovery of the filing fee and I make no order with respect to it.

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 16, 2014

Residential Tenancy Branch

