



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MDSD & FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

I granted the landlord's request to amend its application to reduce its claim from \$7860 to \$3930 plus the cost of the filing fee.

I find that the Application for Dispute Resolution/Notice of Hearing was filed by each party was sufficient served on the other.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the tenant is entitled to a monetary order and if so how much?
- b. Whether the tenant is entitled to recover the cost of the filing fee?
- c. Whether the landlord is entitled to A Monetary Order and if so how much?
- d. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- e. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

The parties entered into a written tenancy agreement that provided that the tenancy would start on June 1, 2013 and end on May 31, 2014. The rent was \$1965 per month plus \$40 parking for a total of \$2005 payable in advance. The tenant paid a security deposit of \$982.50 and a pet damage deposit of \$982.50 at the start of the tenant.

At the end of September the tenant gave the landlord written notice that he was terminating the tenancy on November 30, 2013.

The tenant testified that he attempted to re rent the premises and had 8 showings over the next two months but he was unsuccessful in re-renting the rental unit. The tenant vacated the rental unit on December 4, 2013.

The tenant submits the landlord failed to properly mitigate its loss in failing to advertise during the months of October and November. Further, the landlord failed to mitigate in that when they did start to advertise and show the rental property in December they did not have a parking spot to give to the new tenant. The tenant testified he was aware of one prospective tenant who looked at the rental unit in early December but decided not to rent because of the lack of a parking spot. She walked with the assistance of a cane and access to parking was essential. The landlord acknowledged they did not have parking for this building but testified there is parking in a building which is located near this building. Prospective tenants find this acceptable.

The tenant vacated the rental unit on November 30, 2013. He gave the landlord his forwarding address. However he transposed the numbers. The landlord filed a claim within 15 days of the end of the tenancy. However, those documents were returned when mailed by registered mail to the tenant as the tenant had given an incorrect address. The tenant testified the landlord had the tenant's phone number and could have effected service by phoning him. The landlord's claim was eventually served on

the tenant in January after the tenant became aware of the landlord's claim through information from the Residential Tenancy Branch.

Tenant's Application

I dismissed the tenant's application for an order for double the security deposit/pet damage deposit. The tenant failed to give the landlord his proper forwarding address. I do not accept the tenant's submission that the landlord was legally required to telephone the tenant when the documents were returned. Further and in any event, the landlord filed a claim within 15 days of the end of the tenancy as the landlord is permitted to do under the Act.

Landlord's Application:

The landlord seeks a monetary order for two months loss of rent. The tenant is obliged to pay the rent for the entire fixed term portion of the tenancy but this is subject to the landlord's obligation to mitigate their loss. I do not accept the submission of the tenant that the landlord failed to mitigate its loss during the months of October and November. The tenant attempted to have the rental unit re-rent but despite showing the rental unit on 8 occasions he was not successful. There is no evidence on which an arbitrator can determine that the result would have been any different if the landlord had sufficiently advertised.

I accept the submission of the tenant that the availability of a parking stall in the rental property is an important feature of this tenancy. Further, I accept the submission that the failure of the landlord to provide parking in the rental property amounts to a failure to sufficiently mitigate in this case. The tenant identified a particular prospective tenant who was interested in renting the rental unit but chose not to because of the lack of parking in the building. She walked with a cane. Parking in the rental property was critical for her. The landlord failed to present any evidence to prove that this prospective tenant was not suitable. The manager who showed the rental property is no longer employed by the landlord. The prospective tenant viewed the rental unit on

December 4, 2013. I determined it was reasonable to expect that she would take possession on January 1, 2014.

As a result I determined the landlord has established a claim against the tenant for the loss of rent for the month of December 2013 only.

Monetary Order and Cost of Filing fee

I granted the landlord a monetary order in the sum of \$1965 plus the sum of \$50 in respect of the filing fee (reduced to reflect the limited success of the landlord) for a total of \$2015.

Security Deposit

I determined the security deposit and pet damage deposit totals the sum of \$1965. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$50.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and 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: March 03, 2014

Residential Tenancy Branch

