



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Kenson Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for loss – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The Tenant signed a tenancy agreement with the Landlord on March 3, 2014. The tenancy agreement provided for a tenancy start date of April 1, 2014 for a fixed term ending <March 31, 2015. Rent of \$2,700.00 was payable monthly on the first day of each month. The Landlord collected \$1,350.00 as a security deposit from the Tenant on March 3, 2014.

The Landlord states that despite several calls and emails to the Tenant they did not get any response and the Tenant did not contact the Landlord to take the keys or

possession of the unit. The Landlord states that they advertised the unit immediately after April 1, 2014 and signed a new tenancy agreement on April 14, 2014 for a tenancy to start on June 1, 2014. The Landlord states that there were no other suitable tenants available and that the tenant who signed the tenancy agreement had to provide a month notice to its current landlord.

The Tenant states that she was unable to take possession of the unit as her circumstances had changed and she could no longer afford the unit. The Tenant states that she spoke with an agent of the Landlord around April 24, 2014 and told the Landlord that she could not rent the unit and to keep the security deposit. The Tenant states that the Landlord agreed to take the security deposit and told the Tenant that they would find another tenant for the unit. The Tenant does not recall the name of the agent she spoke with.

The Landlord does not have any knowledge of anyone speaking to the Tenant on the Landlord's behalf. The Landlord states that there was no agreement with the Tenant and that its practice is to ensure that any agreements with tenants are confirmed in writing.

Analysis

Section 16 of the Act provides that the rights and obligations of tenant under a tenancy agreement takes effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit. Given the signed tenancy agreement and the payment of the security deposit, I find that the Landlord has substantiated that the Tenant is obligated to pay the rent as provided under the tenancy agreement. Although the Tenant indicates that the Landlord agreed to accept the security deposit in satisfaction of the rent payable under the tenancy agreement, given that this agreement was not in writing, I accept that the Landlord did not make this agreement.

Accepting the Landlord's evidence of advertising and obtaining a new tenant for June 1, 2014 I find that the Landlord took reasonable measures to mitigate its losses being

claimed against the Tenant. Based on the undisputed evidence that the Tenant failed to pay rent for April and May 2014, I find that the Landlord has substantiated an entitlement to **\$5,400.00** in unpaid rent. As the Landlord has been successful I find that the Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$5,450.00**. Deducting the security deposit of **\$1,350.00** plus zero interest from this entitlement leaves **\$4,100.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,350.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for **\$4,100.00**. If necessary, this order may be filed in the Small Claims 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: August 21, 2014

Residential Tenancy Branch

