



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows.

The tenancy was to begin on July 1, 2014. The tenant provided a \$1700.00 security deposit on June 3, 2014. The landlord stated that the parties agreed to sign the tenancy agreement at move in. On June 10, 2014 the tenant advised the landlord that he had changed his mind and that he no longer wished to rent the unit. The landlord stated that he began to immediately call the parties that he had turned away, advertised on the internet and posted a sign on the property for an available suite. The landlord stated that despite aggressive advertising he was unable to rent the unit until August 1, 2014. The landlord stated that he is seeking \$1700.00 for the loss of revenue for the month of July.

The tenants' testimony is as follows:

The tenant stated that he did not sign a tenancy agreement so he believes there is no contract. The tenant stated that the landlord demanded the deposit be paid in cash and all subsequent payments to also be in cash. The tenant stated that he was never informed by the landlord that they would be entering into a tenancy agreement in writing. The tenant stated he began to have second thoughts about renting from this landlord as he became wary of the demand for cash and no signed agreement. The tenant stated that a week after providing the deposit he changed his mind and no longer wished to rent from the landlord.

Analysis

As explained to the parties during the hearing, the onus or burden of proof is on the party making the claim. In this case, the landlord must prove their claim. When one party provides evidence of the facts in one way, and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The Residential Tenancy Policy Guidelines clearly sets out that in all cases the landlords claim is subject to the statutory duty to mitigate loss. The landlord stated that they attempted to re-rent the unit by posting ads on the internet, calling the parties that he had turned away and by posting signage; however the landlord did not provide any documentation to support that position. The landlord was unable to present even one posting from a free website to support their claim. Based on the insufficient evidence before me I dismiss the landlords' application.

Conclusion

The landlord's application is dismissed. The landlord must return the security deposit of \$1700.00 within 15 days of receiving this decision. In the event that the landlord does not return the security deposit I grant the tenant an order under section 67 for the balance due of \$1700.00. 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: October 29, 2014

Residential Tenancy Branch

