



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes mndc, mnr, mnsd, opr

Introduction:

The landlord applies for dispute resolution, and requests an order of possession, a monetary order for past loss of rent, loss of future rental income, and an order to retain the tenant's deposit.

The tenant failed to attend the hearing. I accept that the tenant was personally served with notice of this hearing.

Issues to be decided:

Is the landlord entitled to an award for recovery of the claimed losses, and if so, should the deposit be applied towards such award?

Background and Evidence:

The parties signed a written tenancy agreement for a fixed term tenancy, beginning September 1, 2014, and ending on August 31, 2015. Monthly rent of \$1,300.00 was payable on the 1st day of each month. A security deposit was paid on August 23, 2014, in the sum of \$650.00.

On or about mid-January, 2015, the tenant advised the landlord she wanted to end the tenancy prior to the end of the term. She paid only half the rent for January, in the sum of \$650.00, and no further rent was ever paid. The landlord placed advertisements for new tenants, but the tenant would not cooperate with the landlord and allow the suite to be shown to prospective tenants. On February 2, 2015, the landlord discovered that the tenant had vacated the premises.

The landlord had some tenants interested for a February 1 rental, but these prospective tenants are now lost. He will not be able to show the premises until he has inspected and repaired any damage to the premises. In the landlord's view, historically it is a poor time of year to attract new tenants.

Analysis:

As the tenant has vacated the premises, and the landlord has recovered possession, no Order of Possession is now required, and that portion of the claim is dismissed.

During a fixed term tenancy, neither the landlord nor the tenant is entitled in law to end the tenancy except for cause or by agreement of both parties. The tenancy however ended prematurely when the landlord recovered possession of the premises on February 2, 2015, due to the abandonment of the premises by the tenant. Such abandonment was a breach of the fixed term tenancy.

The landlord has suffered a loss of January rent of \$650.00, as the tenant was in arrears by this amount. I accept that there is no longer any prospect of attracting a tenant for the month of February, as the premises may required cleaning or repair, and as there are no current prospective tenants in hand. Loss of rental income for February is awarded in the sum of \$1,300.00.

In considering the landlord's claim for further loss of rental income over the term of the tenancy, I must consider that Section 7(2) of the Act requires that the landlord must do whatever is reasonable to minimize the loss. This includes all reasonable steps to secure a new tenant. Such steps may involve reducing the amount of rent asked, and more aggressive advertising. It is premature for me to award future loss of rent for March, or beyond, until the full nature of mitigation steps are known, and the actual loss is more closely quantified. It remains possible that a new tenant will be found for a tenancy effective March 1. I therefore decline to order further loss of rental income at this time. The landlord is a liberty to make further application for any further loss arising from the tenant's breach, once such loss can be more fully proven.

The landlord is therefore awarded the January rental loss of \$650.00, the loss of rental income for February of \$1,300.00, and the \$100.00 filing fee. The total awarded to the landlord, and payable by the tenant, is \$2,050.00. The landlord may retain the \$650.00 security deposit, in partial satisfaction of this sum.

Conclusion:

I order pursuant to section 38(1) that the full amount of the security deposit of \$650.00 be retained, in partial satisfaction of the monetary award noted above.

I further order that the tenant pay the sum of \$1,400.00 to the landlord, representing the remaining sum found due by the tenant to the landlord.

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: February 05, 2015

Residential Tenancy Branch

