



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF, MNSD, MNR

Introduction

This is an application for a monetary order for \$1083.18 and a request for recovery of the \$50.00 filing fee.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

Issue(s) to be Decided

The issue is whether or not the applicant has established a monetary claim against the respondent, and if so in what amount.

Background and Evidence

On September 19, 2014 the tenant gave a Notice to End Tenancy stating that she would be vacating the unit on November 1, 2014.

The landlord accepted that notice and started advertising the rental unit.

The tenant subsequently informed the landlord by e-mail that she would like to vacate earlier and move out on October 1, 2014.

The landlord subsequently took a deposit on September 25, 2014 from a tenant who wanted occupancy for November 1, 2014, and the landlord testified that he lost the full rental income for the month of October 2014.

The tenant has argued that she believes the landlord should have made a greater effort to re-rent the unit for October 2014, and should not have taken a deposit for November 1, 2014, when there was still a possibility that it could have been rented for October 1, 2014.

The landlord argued that he did take reasonable steps to try and re-rented for October 2014, however he was unable to do so and when someone was willing to take it for November 1, 2014 he decided it was best to rent to them to ensure that he didn't lose November 2014 rent as well.

Analysis

The official Notice to End Tenancy given to the landlord was for the end of October 2014, and therefore it is my finding that it was reasonable for the landlord to accept the deposit to rent the unit as of November 1, 2014.

The tenant has argued that since she subsequently informed the landlord that she wanted to vacate by the end of September 2014, the landlord should have made a greater effort to re-rent the unit for October 1, 2014; however had the landlord done so he would have been putting himself in jeopardy, because legally the tenant did not need to vacate the rental unit until the end of October 2014.

Therefore had the landlord re-rent the unit for October 1, 2014 and then for some reason the tenant failed to vacate the unit on October 1, 2014, the landlord would have had little recourse since the only valid Notice to End Tenancy ended the tenancy at the end of October 2014.

The tenants subsequently notice to end the tenancy on October 1, 2014 was not a valid Notice to End Tenancy as it ended the tenancy earlier than allowed under the act and therefore would have been self-correcting to the end of October 2014 pursuant to section 53 of the Residential Tenancy Act which states:

- 53** (1) If a landlord or tenant gives notice to end a tenancy effective on a date that does not comply with this Division, the notice is deemed to be changed in accordance with subsection (2) or (3), as applicable.

(2) If the effective date stated in the notice is earlier than the earliest date permitted under the applicable section, the effective date is deemed to be the earliest date that complies with the section.

I therefore allow the landlord's claim for lost rental revenue for the month of October 2014.

I will not however allow the landlord's claim for utilities as the landlord has failed to supply any evidence of the cost of the utilities, other than verbal testimony that they came to \$103.18. This is insufficient evidence to meet the burden of proving the landlords claim for outstanding utilities.

I will however allow the claim for recovery of the \$50.00 filing fee.

Conclusion

I have allowed \$1030.00 of the landlords claim, and I therefore Order, pursuant to Section 38 of the Residential Tenancy Act, that the landlord may retain the full security deposit of \$490.00, and pursuant to section 67 of the Residential Tenancy Act I have issued an Order for the tenant to pay \$540.00 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: April 29, 2015

Residential Tenancy Branch

