



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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. An Order to retain the security deposit - Section 38; and
3. 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 following are undisputed facts: The tenancy started on July 1, 2014 and ended on September 15, 2014. Rent of \$900.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$450.00 as a security deposit. The Tenant gave its notice to end tenancy on August 18, 2014.

The Landlord states that immediately upon receiving the Tenant’s notice the Landlord advertised the unit on several online sites. The Landlord states that the unit was advertised for \$950.00 and that it was rented for \$980.00 for October 1, 2014. The Landlord states that the unit likely would have been rented sooner if the Tenant had not

restricted the Landlord to a half hour for showing the unit. The Landlord states that the units are in great demand and that there was no shortage of prospective renters for the unit. The Landlord states that the Tenant could have been given 24 hour notices for the showings but the Landlord did not want to disturb the Tenant and as the Tenant wanted to be present for the showings. The Landlord states that the Tenant failed to give the required full month notice for the beginning of October 1, 2014 and as the Tenant only paid for half of the September 2014 rent the Landlord claims \$450.00.

The Tenant denies restricting the Landlord's time and states that the Landlord was told only that the Tenant would prefer to be at home for the showings. The Tenant states that the Landlord was not refused entry for showings and that the Landlord showed the unit frequently, with as many as 4 showings in August 2014. The Tenant states that the tenancy ended because the Landlord provided a unit with a fridge and stove that were fire and food hazards and because the Tenant discovered that the Tenant was paying for a portion of another tenant's share of utilities. The Tenant states that for his own health and safety he had to end the tenancy.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed.

Although it can be found that the Tenant did not comply with the Act in relation to the notice to end the tenancy, based on the Landlord's evidence that the unit was advertised for a greater amount than was paid by the Tenant, I find that the Landlord failed to take reasonable steps to minimize the rental loss claimed. Given this finding I do not find that the Tenant prevented the Landlord from renting the unit earlier than October 1, 2015. I find it more likely, given the Landlord's evidence of rental demand,

that the Landlord delayed renting the unit in order to obtain a greater amount of rent. I therefore dismiss the Landlord's application. The decision and order dated April 15, 2015 are set aside. I order the Landlord to return the security deposit of **\$450.00** plus zero interest to the Tenant forthwith. The Tenant is at liberty to make a claim for compensation in relation to any losses caused by the Landlord's breach of the tenancy agreement or Act.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$450.00**. 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: June 24, 2015

Residential Tenancy Branch

