



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing and gave sworn testimony. The tenants had a translator attending to assist the tenant as the tenant did not speak English as a first language. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Issue(s) to be Decided

- Is the landlord entitled to an Order permitting the landlord to keep the security deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that this tenancy was due to start on December, 01, 2014. The tenant paid a security deposit of \$225.00 on November 06, 2014 and the rent was agreed at \$450.00 for this unit.

The landlord testified that she had advertised the unit and the tenant came and viewed the unit and agreed to move in on December 01, 2014. The tenant paid the security deposit which secured the unit and the tenancy agreement would be completed when the tenant moved in. The landlord testified that later the tenant informed the landlord that he had changed his mind and did not want to move into the unit. The landlord informed the tenant that he has to give a month's notice and he should move in as planned and then move out at the end of December. The tenant did not want to do this so the landlord contacted some of the other interested tenants but they had already secured alternative accommodation. The landlord placed another advertisement in the paper on or about November 22, 2014. This time there was minimal response to the advert.

The landlord revised their claim for a loss of rent for the entire month of December of \$450.00 as the unit was re-rented on December, 18, 2014. The landlord therefore seeks a Monetary Order to recover a loss of rent from December 01 to December 18, 2014 of \$261.29. The landlord seeks an Order to keep the tenant's security deposit of \$225.00 to go towards the loss of rent for December and a Monetary Order for the balance plus the filing fee of \$50.00.

The tenant gave testimony through his translator. The tenant testified that the landlord should return the security deposit as at 2.00 p.m. on November 06, 2014 the tenant paid the security deposit and then at 6.00 p.m. the tenant changed his mind about renting the unit. The tenant testified that he does not understand English very well and so had just paid the security deposit to the landlord when she asked for it without understanding that this tied him into an agreement to rent the unit. The tenant was still waiting for the landlord to provide a contract to rent the unit.

The landlord testified that before the tenant paid the security deposit he did speak to his counsellor and informed him that he was renting the unit. The landlord also spoke to the tenant's counsellor and his counsellor explained that the tenant wanted to rent the unit. The tenant's counsellor spoke very good English and was able to communicate to the tenant in his own language. When the tenant said he did not want to move in the landlord spoke to his counsellor and informed him that the tenant would have to provide one month's notice in writing and the best thing would be for the tenant to move in for the month of December.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. When a tenant pays a security deposit the tenant affectively enters into an agreement to rent a unit on a date agreed between the parties. I am satisfied that the tenant agreed to rent the unit from December, 01, 2014.

When a tenant enters into an agreement the tenant must provide one clear month's notice to end the tenancy. I refer the parties to s. 45(1) of the *Act* which states:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Therefore, the earliest the tenant could have ended the tenancy would have been December 31, 2014 by giving the landlord written Notice on November 30, 2014. The landlord has therefore established a claim to recover a loss of rent for December up to the time the landlord re-rented the unit on December 18, 2014.

For all claims the claimant has a duty to minimize the loss. I am satisfied from the evidence presented that the landlord took steps to mitigate the loss by trying to re-rent the unit as quickly as possible.

I find the landlord is entitled to a loss of rent for 17 days in December as the new tenants moved in on December 18 and consequently the landlord is entitled to recover the amount of **\$246.77**. As the landlord holds the tenant's security deposit in trust of **\$225.00**; I Order the landlord to keep the security deposit to deduct from her claim for a loss of rent.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** from the tenant pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Loss of rent in December, 2014	\$246.77
Less security deposit	(-\$225.00)
Plus filing fee	\$50.00
Total amount due to the landlord	\$71.77

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$71.77**. This Order must be served on the Respondent and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: July 13, 2015

Residential Tenancy Branch

