



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding VALLEY REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- a) A monetary order pursuant to Sections 44, 45 and 67;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

Both parties attended and the tenant agreed he received the Application for Dispute Resolution by registered mail. I find that the tenant was properly served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

The tenant signed a fixed term tenancy agreement but did not occupy the premises. Is the landlord to a Monetary Order for rental loss and filing fee?

Background and Evidence:

Both parties attended and were given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that a fixed term tenancy agreement was signed by the tenant on February 24, 2015 for a term commencing March 1, 2015 and expiring on February 29, 2016. The tenant provided cheques for the first month's rent of \$1550 and security deposit of \$775 but then stopped payment on them because he said he had changed his mind and no longer wanted to rent the unit.

The landlord was able to mitigate rental loss by renting the unit for March 18, 2015. The landlord claims \$850 for rental loss from March 1-17 ($1550/31 \times 17$ days) and to recover the filing fee.

The tenant signed a Condition Inspection Report noting various items that were dirty or scratched or needed some repair but he did not note any items that had to be repaired

before the start of the tenancy. He said when he signed the lease he had not viewed the property but was pressured to sign because of some unusual circumstances of the previous renter or owner. He said he was promised the unit would be painted and the appliances would be like what he was shown in a promotion picture. However, he said when he viewed it on March 1, 2015, the unit was in terrible condition so he decided he did not want to live in a place in that condition. He said there was a social connection through the children so he trusted promises that were made and got nothing in writing.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Section 45(2) (c) of the Act states that a fixed term tenancy may only be ended at the date specified in the agreement as the end of the tenancy which was February 29, 2016 in this case. I find that the tenant may have received verbal promises on which he relied but he has nothing in writing to over ride the agreement that he signed. I find he violated the terms of the fixed term tenancy by refusing to honour his agreement and the landlord suffered rental loss as a result. Fortunately, the landlord mitigated the loss by re-renting the unit as soon as possible, thereby calling an end to the tenancy.

I find the weight of the evidence is that the tenant is responsible to compensate the landlord for rental loss from March 1st to 17th which is 17 days. As rent was \$1550, I find it was \$50 a day for March 2015 (1550/31). I find 17 days at \$50 a day is \$850 so I find the landlord entitled to a monetary order for \$850 plus the \$50 filing fee for this application.

Conclusion:

I find the landlord is entitled to a monetary order for \$900.

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 29, 2015

Residential Tenancy Branch

