



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, 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. A Monetary Order for compensation - Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath 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 agreed facts: The tenancy agreement was signed on December 22, 2014 for a tenancy start date of February 1, 2015. Rent of \$1,295.00 was payable monthly on the first day of each month. Upon signing the tenancy agreement the Tenant paid \$647.50 as a security deposit. On January 9, 2015 the Tenant verbally gave notice to end the tenancy immediately as the Tenant was not going to move into the unit. On January 16, 2015 the Tenant gave written notice and provided its forwarding address.

The Landlord states that units are advertised on an internet site on an ongoing basis and that the Tenant's 3 bedroom unit would have been listed from January 10 and forward for the same rental amount and for immediate availability. The Landlord states that no copies of the ads were provided as evidence as the person who was responsible for placing the ads is no longer with the Landlord. The Landlord states that they are not sure why but no prospective tenants were found for sooner than a March 1, 2015 tenancy start. The Landlord states that there is no waiting list for market rent units. The Landlord reduces the claim for lost rental income for February 2015 to \$647.50.

The Tenant states that the internet site was checked every day during January 2015 and that at no time was the Tenant's unit listed. The Tenant states that the site was checked daily as the Tenant needed the security deposit. The Tenant states that she saw units in other cities advertised but not the rental unit's city. The Tenant states that she gave up checking for February 2015.

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 that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed. Although the Landlord's evidence is that the unit was advertised immediately, this is not direct evidence and no copies of any rental ads were provided by the Landlord to support its indirect oral evidence. I found the Tenant's direct evidence to be detailed, persuasive and to hold a ring of truth. I therefore prefer the Tenant's evidence and find that the Landlord has failed to provide sufficient evidence of reasonable mitigation steps. I therefore dismiss the Landlord's claim and application. I order the Landlord to return the security deposit of \$647.50 plus zero interest to the Tenant forthwith.

Conclusion

The application is dismissed.

I grant the Tenant an order under Section 67 of the Act for **\$647.50**. 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: August 11, 2015

Residential Tenancy Branch

