



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing him to retain the security deposit and a cross-application by the tenant for an order for the return of her security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?
Should the security deposit be returned to the tenant?

Background and Evidence

The facts are not in dispute. The tenancy began on April 1, 2014 and ended on April 30, 2015. Rent was set at \$650.00 per month and at the outset of the tenancy, the tenant paid a \$325.00 security deposit. On April 2, the tenant posted on the landlord's door her notice advising that she would be vacating the rental unit on May 1, 2015. The landlord testified that he found the notice on April 3. The landlord attempted to re-rent the unit through advertising it on Craigslist as soon as he received the tenant's notice, but was unable to find new renters to occupy the unit in the month of May. The landlord seeks to recover loss of income for the month of May and wishes to apply the security deposit to that loss.

The tenant seeks the return of her security deposit. She argued that since there was no damage and because she believes she gave 30 days' notice that she was ending her tenancy, she should not be responsible for the landlord's loss of income. She further argued that because the landlord had the house listed for sale, he had no intention of re-renting the house, despite having advertised it for rent. The tenant further argued that when the parties conducted the inspection of the home, the landlord had promised

to return her security deposit. The landlord replied to this allegation by saying that he merely acknowledged that the tenant had not damaged the unit but he did not promise to return the deposit.

Both parties seek to recover the filing fees paid to bring their respective applications.

Analysis

Section 45(1) of the Act provides as follows:

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

45(1)(a) is not earlier than one month after the date the landlord receives the notice, and

45(1)(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.

Because the rent was due on the first day of each month, the tenant would have had to give notice to the landlord no later than March 31 in order to end her tenancy on April 30.

Section 53(1) of the Act provides as follows:

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.

I find that the tenant's notice could not have been effective prior to May 31 and I find that section 53(1) operates to change the effective date of the notice to May 31.

Section 7 of the Act provides as follows:

7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The parties did not dispute that the landlord did not re-rent the unit for the month of May. As the tenant acknowledged that the landlord told her that he was advertising the unit, I accept that he acted promptly to place advertisements and therefore acted reasonably to mitigate his losses. Although he did not show the unit to prospective renters in the month of April, I accept that this was because no suitable candidates requested a showing. I find that the fact that the house had been listed for sale has no bearing on the landlord's efforts to re-rent as the sale could take place subject to existing tenancies and the landlord has since re-rented the unit, so is clearly not averse to having it rented while on the market. I find insufficient evidence to show that the parties had a verbal agreement that the landlord would return the security deposit.

For these reasons, I find that the tenant is liable for the month of lost rent and I award the landlord \$650.00. As the landlord has been successful in his claim, I find he should recover the cost of the filing fee paid to bring his application and I award him \$50.00 for a total entitlement of \$700.00. I order the landlord to retain the \$325.00 security deposit in partial satisfaction of the claim and I grant him a monetary order under section 67 for the balance of \$375.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

I dismiss the tenant's claim in its entirety.

Conclusion

The tenant's claim is dismissed. The landlord will retain the security deposit and is granted a monetary order for \$375.00.

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: September 30, 2015

Residential Tenancy Branch

