



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MND, FF

Introduction

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Preliminary Matter:

The tenant requested an adjournment on the basis that he had some documents which were not delivered to the landlord and to the Branch because he was not aware of the time periods set out in the Rules of Procedure relating to the exchange of evidence. The landlord strongly opposed the request. After hearing the submissions of both parties I determined this was not an appropriate case to grant an adjournment. The failure of the tenant to inform himself of the Rules relating to the exchange of evidence is not a sufficient reason.

I find that the Application for Dispute Resolution/Notice of Hearing was sufficiently served on the tenant by mailing, by registered mail to where the tenant resides and by personal service on March 31, 2015.

Issue(s) to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to A Monetary Order and if so how much?

- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence

On June 19, 2014 the parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on August 1, 2014 and end on July 31, 2015. The rent is \$3575 per month payable in advance on the first day of each month. The tenant paid a security deposit of \$1750 at the start of the tenancy.

Around the middle of July 2014 the tenant advised the landlord he was not going to take possession of the rental unit. On July 15, 2014 he e-mailed the landlord confirming this in a letter dated July 14, 2014. The tenant also sent the letter of July 14, 2014 to the landlord by registered mail on July 15, 2014. The landlord testified he did not receive this letter until August 3, 2015.

The Application for Dispute Resolution filed by the landlord claims the sum of \$1965 for rent losses during the unexpired portion of the term particulars are as follows:

- The rental unit remained vacant for August 2014 and the landlord claims the sum of \$3575.
- The landlord was able to re-rent the rental unit for a fixed term from September 2014 to December 2015 for a reduced rent of \$3200. The landlord claims the difference of \$1500 ($\$375 \times 4 = \1500).
- The rental unit remained vacant for January, February and March 2015 and the landlord claims \$10,725.
- On February 28, 2015 the landlord entered into a 6 month fixed term tenancy agreement for the reduced rent of \$2800 per month commencing April 1, 2015.. The landlord claims the difference between the two agreement for the period April, May, June and July ($\$775 \times 4 = \3100).

The landlord presented evidence of his attempts to mitigate including the following:

- The first advertisement placed on Craigslist was placed on August 1, 2014.
- He posted the advertisement every 3 or 4 days as permitted by Craigslist;
- The 4 month fixed term tenancy agreement was signed on September 1, 2014 and covered the period from September 1, 2014 to the end of December 2014.
- He commenced advertising in early November for the period after January 1, 2015. He reduced the rent from \$3500 to \$3350 to \$3000 to \$2800.
- He testified he advertised on Craigslist on over 30 occasions.

The tenant disputes the landlord's claim. He testified the landlord represented he could put a hot tub on the patio of the rental unit. After he signed the tenancy agreement he discovered that strata rules prohibited this. The hot tub was an important reason for taking the rental unit. The landlord denies he represented the tenant could use a hot tub. There is no reference to a hot tub in the residential tenancy agreement signed by the parties.

Analysis:

The law provides the tenant is obliged to pay the rent for the unexpired term of a fixed term tenancy agreement subject to the landlord's obligation to mitigate his loss and whether the landlord has breached a material term of the fixed term tenancy agreement. There is insufficient evidence the landlord has breached a material term of the tenancy agreement.

The tenant failed to prove the landlord misrepresented to the tenant that the tenant could install a hot tub on the patio. There is no reference to the hot tub in the tenancy agreement. The landlord denies making such a statement. One would have expected that a reasonable tenant would have included such a term in the tenancy agreement if it was as important as the tenant alleged. Further, the letter dated July 14, 2014 is vague alleging the tenancy agreement was contingent upon certain terms that have yet to

materialize. I do not agree. The written tenancy agreement between the parties does indicate it is contingent upon certain terms.

Analysis - Monetary Order and Cost of Filing fee:

As a result I determined the landlord has established a claim against the tenant in the sum of \$18,900 for loss of rent. I accept the landlord's accounting. I granted the landlord a monetary order in the sum of \$18,900 plus the sum of \$100 in respect of the filing fee for a total of \$19,000.

Security Deposit:

I determined the security deposit plus interest totals the sum of \$1750. I ordered the landlord may retain this sum thus reducing the amount outstanding under this monetary order to the sum of \$17,250.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible. Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial 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: September 08, 2015

Residential Tenancy Branch

