



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order, an order to retain the security deposit in partial satisfaction of the claim, and an order to recover the filing fee. Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure; however, I refer to only the relevant facts and issues in this decision.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on May 15, 2015 and ended on November 30, 2015. The tenancy was to be for a fixed term that was scheduled to end on May 14, 2016 but the tenants "broke the lease early". The tenants were obligated to pay \$1400.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$700.00 security deposit. The landlord stated that the tenant paid a \$1400.00 rent payment at the outset of the tenancy. The landlord stated that \$700.00 was put towards the rent for May 15-31, 2015, leaving the other \$700.00 credit to address at the end of the tenancy. The landlord stated that he holds \$1400.00 in trust as of today's hearing.

The landlord stated that on November 16, 2015 the tenant gave notice that they would be moving out by November 30, 2015. The landlord stated that they made all attempts to mitigate their losses and were able to rent the unit from December 18, 2015 onward. The landlord stated that the unit remained empty for seventeen days. The landlord stated that he feels that he should be awarded the \$1400.00 due to the loss of revenue of 17 days and the efforts it took to rent during the winter month close to Christmas.

The tenant gave the following testimony. The tenant stated that they had no intention to end the lease early but due to unforeseen circumstances they had to. The tenant stated that they were very flexible and opens to showings the landlord wish to conduct and left the unit in excellent condition. The tenant stated that they feel the landlord would be more than compensated if awarded seventeen days of pro-rated rent.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the tenant's claim and my findings around each are set out below.

The tenant acknowledges that he did not give proper notice to end the fixed term tenancy as required under Section 45(2) of the Act. However, a landlord is required to mitigate their losses under Section 7(2) of the Act. I find that the landlord did mitigate their losses by aggressively advertising the unit to obtain a new tenant for December 18, 2015.

The landlord suffered a loss of revenue for 17 days. $\$1400.00$ rent divided by 31 days in the month of December = $\$45.16$ per diem x 17 days = $\$767.74$ loss of revenue.

The landlord is also entitled to the recovery of the $\$50.00$ filing fee.

Conclusion

The landlord has established a claim for $\$817.74$. I order that the landlord withhold that amount from the $\$1400.00$ that they hold in trust for full satisfaction of their claim. The landlord is to return the remaining balance of $\$582.26$ to the tenant. I grant the tenant an order under section 67 for the balance due of $\$582.26$. 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: July 11, 2016

Residential Tenancy Branch