



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD FF

Introduction:

Both parties attended the hearing and the tenant confirmed he received the landlord's Application for Dispute Resolution by registered mail. . I find that the tenant was properly served with the documents according to section 89 of the Act. The landlord applies pursuant to the *Residential Tenancy Act* (the Act) for orders as follows:

- a) A monetary order pursuant to Section 67 for rental loss;
- b) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

Issue(s) to be Decided:

Is the landlord now entitled 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 the tenants responded to an advertisement of the landlord and on February 26, 2016 paid a security deposit of \$650 and a pet deposit of \$400 to the landlord for their tenancy to commence on March 15, 2016. Rent was to be \$1300 a month. The tenants said they had expressed concerns over the children's schools to the landlord and said they needed a week to decide. They say the landlord had assured them that the unit would be easy to re-rent and he would return their deposits in the event they did not follow through with the tenancy. The landlord denies he made such promises.

On March 11, 2016 (14 days later) both parties confirm that the tenant informed the landlord they could not move-in on March 15, 2016 and requested their damage/security and pet deposits to be returned. The male tenant said he was very busy and it took some time to find the necessary information on schools. The landlord returned their pet damage deposit but filed an Application to claim against the security deposit on March 21, 2016 as he lost a month's rent due to the tenant's actions. The landlord said he advertised immediately but was unable to secure a new tenant until May 4, 2016. However, he is willing to waive rental losses and filing fee in excess of the security deposit. He applies to retain the deposit to partially cover his rental losses.

The tenant began to make derogatory remarks to the landlord and me when I informed him of the likely outcome. He left the conference abruptly.

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

Analysis:

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Section 1 of the *Act* provides that a tenancy may be written, oral or implied. I find the weight of the evidence is the landlord offered the unit for rent, the tenants viewed the unit and accepted it and signified their acceptance by paying a security and pet damage deposit on February 26, 2016. I find they entered into a contract with the landlord to rent the unit. Relying on this, the landlord ceased to advertise the unit for rent.

Sections 44 and 45 of the *Act* states how tenancies end. Section 45 provides a tenant may end a tenancy by giving one full month's notice. I find in this case, the tenant provided only 4 days notice that he was ending the tenancy which was a violation of the *Act*. I find the landlord suffered rental loss of \$1300 by the tenant's actions as he was unable to re-rent until May 2016. Although the landlord may be entitled to a monetary order for \$1300, he states he is willing to settle for retaining the security deposit of \$650 inclusive of the filing fee.

I find insufficient evidence to support the tenant's allegations of promises made by the landlord. The landlord denies such promises. However, even if the landlord did grant him a week to find out the situation of the schools in the area, I find he did not get back to the landlord until 14 days later.

Conclusion:

I find the landlord is entitled to retain the security deposit of \$650 in full satisfaction of his rental losses and filing fee.

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 28, 2016

Residential Tenancy Branch

