



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding LI-CAR MANAGEMENT GROUP
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNSD, MNDC, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for loss of income, the filing fee and to keep the security deposit in satisfaction of her claim. The tenant applied for a monetary order for the return of the security deposit and for the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to keep the security deposit in partial satisfaction of her claim for loss of income and the filing fee? Is the tenant entitled to the return of the security deposit and the filing fee?

Background and Evidence

On November 22, 2016, the tenant paid a security deposit in the amount of \$375.00 for the landlord to hold unit #3 for her to move in on December 01, 2016. The landlord provided the tenant with a receipt for the security deposit. The agreement was not documented.

On November 24, 2016, the tenant decided not to rent this unit and sent the landlord a letter informing her of her decision. The letter contained a forwarding address for the tenant. The landlord testified that she made immediate efforts to find a tenant for December. A new tenant was found for December 15, 2016.

The landlord has applied for the loss of income suffered for the first half of December in the amount of \$375.00. The landlord has also applied for the recovery of the filing fee of \$100.00 but during the hearing agreed to withdraw this portion of her application.

Analysis

Landlord's application:

Section 16 of the *Residential Tenancy Act* states that the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

The parties entered into a verbal tenancy agreement on November 22, 2016 at which time the tenant paid the security deposit. Even though there was no document signed by both parties regarding the terms of the agreement, the rights and obligations of both parties took effect that date, even though the tenant never moved in. Once the security deposit is paid, the tenancy is considered started. Accordingly, the tenant is obliged to give the landlord one month's notice to end the tenancy and the landlord is entitled to rental income for that month.

In this case, the tenant entered into a tenancy agreement, but failed to give the landlord adequate notice to end the tenancy. The landlord made efforts to mitigate her losses by showing the suite and was able to find a tenant for December 15, 2016. This resulted in a loss of income to the landlord for the period of December 01-15, 2016.

Residential Tenancy Policy Guideline #3 states that the damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule, this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. Therefore, I find that the landlord is entitled to the income that she lost for part of the month of December 2016, in the amount of \$375.00.

Tenants' application:

As stated above, the rights and obligations of both parties started on November 22, 2016 when the tenant paid the security deposit of \$375.00. Also as stated above, by giving the landlord notice on November 24, 2016 to end the tenancy on November 30, 2016, the tenant failed to provide the landlord with adequate notice to end the tenancy.

As a result of this breach on the part of the tenant, the landlord suffered a loss of income for the first half of December and is entitled to recover this loss from the tenant. I find that the tenant must pay this amount of \$375.00 to the landlord. The landlord agreed to withdraw her application for the recovery of the filing fee.

The tenant has not proven her claim and therefore must bear the cost of filing her own application.

The landlord has established a claim of \$375.00 and currently holds a security deposit in the same amount. . I order that the landlord retain the security deposit in full satisfaction of the claim

Conclusion

The landlord may retain the security deposit of \$375.00. The tenant's application is dismissed in its entirety.

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: February 01, 2017

Residential Tenancy Branch