



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover a loss of income and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of the monetary claim.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves. The landlord was represented by his agents.

As both parties were in attendance I confirmed service of documents. The tenant confirmed receipt of the landlord's package which contained his application for dispute resolution and notice of hearing. The tenant testified that no other documents were in the package from the landlord.

The landlord agreed that he had received the tenant's evidence by email and that he had not included any materials other than the notice of hearing and his application, in the package sent to the tenant. I find that the parties were served with materials in accordance with sections 88 and 89 of the *Act*.

Right at the start of the hearing it was apparent that communication with the landlord's agents was hampered by their lack of fluency with the language.

Issues to be decided

Is the landlord entitled to a monetary order to recover loss of income and the filing fee?

Background and Evidence

The parties agreed that the tenancy started on March 01, 2018 for a fixed term of one year ending on February 28, 2019. The monthly rent was \$1,200.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$600.00.

The tenant testified that the parties communicated primarily by text message and on October 07, 2018, she asked the landlord by text message, for permission to end the tenancy effective December 01, 2018. The tenant stated that the landlord did not respond to the message and therefore she sent him follow up messages on October 12, 15 and 16, 2018. The landlord responded to the October 16 message and replied that the tenant could move out by saying “*You can*”. The landlord also mentioned that the security deposit would be returned after the tenant moved out.

The landlord denied having received a copy of this conversation in the evidence package but stated that even if he said that the tenant could move out, the tenant was still responsible for any loss of income that he suffered by the tenant moving out prior to the end date of the fixed term.

The landlord testified that on November 11, 2018 he started advertising for a tenant but was unable to find one for December 2018. The landlord stated that a new tenant was found for January 01, 2019. The landlord is claiming the loss of income that he suffered for the month of December 2018 in the amount of \$1,200.00 and for the recovery of the filing fee of \$100.00.

On November 14, 2018, the tenant gave the landlord a note stating that she would allow the landlord to retain \$40.00 from the security deposit as rent for the day of move out which was December 01, 2018. The landlord signed in agreement. The tenant stated that she moved out on December 01, 2018 by 11:00 am.

Analysis

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of both parties and the documents filed into evidence, I find that the tenant did provide more than one clear month notice to end the tenancy. However the tenant provided notice to end the tenancy with an effective date of December 01, 2018, which is prior to the end date of the fixed term. By ending the tenancy prior to the end date of the fixed term, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. The landlord testified that he started advertising the availability of the rental unit on November 11, 2018 but did not file any copies of advertisements. By advertising on November 11, 2018, it is unlikely that the landlord would find a tenant for December 01, 2018.

Based on the testimony of both parties and the copies of messages filed into evidence, I find that on October 16, 2018, the tenant provided notice to end the tenancy and the landlord responded by text message. The landlord testified that he started looking for a tenant on November 11, 2018 which is almost one month after he accepted the tenant's notice to end the tenancy.

Based on my findings and section 7 of the *Residential Tenancy Act* I find that the landlord has not proven that he made sufficient efforts to minimize the loss he suffered. Accordingly I dismiss the landlord's claim to recover the loss of income that he testified he incurred for December 2018. Since the landlord has not proven his claim, he is not entitled to the recovery of the filing fee.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord has failed to establish a claim it is appropriate that I order the return of the security deposit to the tenant.

Accordingly, I so order. I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for \$600.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the tenant a monetary order in the amount of **\$600.00**.

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: April 05, 2019

Residential Tenancy Branch