



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

REVIEW HEARING DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This review hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Has the Landlord provided sufficient evidence of mitigation?

Is the Landlord entitled to the monetary amounts claimed?

Relevant Background and Evidence

The following are agreed facts: The tenancy under written agreement started on November 1, 2018 on a fixed term to end April 30, 2019. At the outset of the tenancy the Landlord collected \$662.50 as a security deposit. Rent of \$1,325.00 was payable on the first day of each month. The tenancy ended on December 31, 2018 and the Tenant provided its forwarding address to the Landlord on the same day.

The original hearing for this dispute was held on May 3, 2019 and the Decision for this hearing is dated May 10, 2019 (the "Original Decision"). A Review Consideration Decision dated June 6, 2019 (the "Review Consideration Decision") found that the Tenant provided sufficient evidence of fraud in relation to the evidence given by the Landlord at the original hearing that the Tenant vacated the unit on December 31, 2018 without any notice to the Landlord and that the Landlord advertised the unit in January 2019. The Review Consideration Decision suspended the Original Decision until confirmed, varied or set aside.

The Landlord states that the Tenant gave its notice to end the tenancy by text on December 1, 2018 to end the tenancy for December 31, 2018. The Landlord states that the unit was advertised online on December 3, 2019 for the same rental amount. The Landlord states that it had as many as 20 persons viewed the unit in December 2018 but that the unit was not rented until February 1, 2019. The Landlord states that the unit could not be rented sooner due to speculation and vacancy taxes.

The Landlord states that this was the same evidence given at the original hearing and denies that the evidence set out in the Original Decision was given by the Landlord. The Landlord states that the translator who is attending this hearing also attended the original hearing. It is noted that no translator was identified in the Original Decision as attending the original hearing. The Landlord states that the translator is required due to the Landlord's hearing problems. The Landlord confirmed that no supporting evidence of the advertisements were provided for this review hearing. The Landlord states that the Tenant's text on December 1, 2018 was provided by the Landlord as evidence for the original hearing. It is noted that no such evidence was provided by the Landlord to the Residential Tenancy Branch and the Tenant confirms that no such evidence was provided to the Tenant from the Landlord.

The Tenant states that the Landlord is hard of hearing and would not answer telephone calls, so the Parties used texting as the primary method of communication during the

tenancy. The Tenant submits text evidence indicating that the Landlord confirmed receipt of the notice to end tenancy by text on December 1, 2019. The Tenant states that the Landlord showed the unit four times in December 2018.

The Landlord made a final submission that the Tenant served the Landlord with the review hearing notice of proceeding late and that the Tenant sent evidence to the Landlord late and by email. The Landlord confirmed that there were no problems understanding the Tenant's evidence.

The Tenant states that he believes that the Landlord is lying at this hearing about the evidence the Landlord gave at the original hearing as well as the presence of the translator at the original hearing. The Tenant states that he does not believe that the translator is accurately translating the Landlord's evidence as the translator confirmed at the onset of the hearing and during the hearing that the translator was the Landlord's friend. The Tenant states that at the end of the tenancy the Landlord had agreed to return the security deposit and then refused to reply to the Tenant's texts in January 2019 asking for the return of the security deposit. The Tenant states that he only heard back about the security deposit when the Tenant was originally served with the Landlord's application to retain the security deposit. The Tenant argues that the Landlord is only focussed on technical details and not the substantive matter of the dispute. The Tenant states that the Landlord's actions have affected the Tenant's medical condition and that the Tenant believes that the Landlord will continue to act this way with future tenancies.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is

reasonable to minimize the damage or loss. Section 52(a) of the Act provides that in order to be effective, a notice to end a tenancy must be in writing and must be signed and dated by the landlord or tenant giving the notice. Although the Tenant gave its notice to end tenancy to the Landlord by way of text, I consider the undisputed evidence that texts were the primary method of communication between the Parties during the tenancy, the undisputed evidence that the Landlord confirmed receipt of the notice without objection, and the undisputed evidence that the Landlord immediately acted on its rights to advertise and show the unit following receipt of the texted notice. For these reasons I find that the Tenant's notice to end the tenancy by text, while not in conformance with the Act, did not cause any losses to the Landlord.

Based on the agreed facts that the Tenant ended the tenancy prior to the end of the fixed term I find that the Tenant did not comply with the tenancy agreement or Act. However, given the Landlord's evidence that it provided different evidence at the original hearing than was set out in the Original Decision, I consider the Landlord's evidence at this hearing to lack credibility. There is no evidence that the Landlord did not receive the Review Consideration Decision indicating fraud on behalf of the Landlord. In this circumstance I consider that the Landlord would have known its evidence at the Original Hearing, particular it's mitigation evidence, would be at issue. As the Landlord did not provide any supporting evidence of the terms of the next tenancy and as the Landlord's unsupported evidence of taxes making it more difficult to find tenants does not hold a ring of truth, I find that the Landlord has not provided sufficient evidence of reasonable attempts to mitigate the rental loss being claimed in the circumstances. I therefore dismiss the Landlord's claim for lost rental income. As the Landlord has not been successful with this claim I dismiss the claims to retain the security deposit and to recover the filing fee. In effect the application is dismissed in its entirety.

Section 82(3) of the Act provides that following the review, the director may confirm, vary or set aside the original decision or order. This Review Hearing Decision sets aside

the Original Decision and monetary order. I order the Landlord to forthwith return the security deposit plus zero interest of \$662.50 to the Tenant.

Conclusion

I grant the Tenant an order under Section 67 of the Act for **\$662.50**. If necessary, 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 Act.

Dated: July 22, 2019

Residential Tenancy Branch