



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNSD, MNDC, MNR, FF.*

Introduction

This hearing dealt with an application by the landlord, 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 and pet deposits in partial satisfaction of his claim.

The landlord sent a copy of his application and the notice of hearing to the tenant by registered mail on September 18, 2019, to the forwarding address provided by the tenant. The landlord filed a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to keep the security and pet deposits in partial satisfaction of his claim for loss of income and the filing fee?

Background and Evidence

On July 24, 2019, the parties entered into a tenancy agreement and the tenant paid security and pet deposits in the total amount of \$1,900.00, for the landlord to hold the rental unit for a tenancy that would start on September 01, 2019. A copy of the tenancy agreement was filed into evidence. The tenancy was a fixed term of one year which would end on September 01, 2020. The landlord agreed that there was a typographical error in the agreement that stated that the end date of the fixed term was September 01, 2019. The rent was set at \$1,900.00 due on the first day of each month.

On August 22, 2019, the tenant informed the landlord that he was not going to be moving into the rental unit. The landlord started advertising the availability of the unit and filed copies of the rental ads. Despite his efforts, a tenant was not found for September 01, 2019 but one was found for September 15, 2019 at a rental amount of \$1,800.00.

The landlord has applied for a monetary order for the loss of income that he suffered for September 2019 and for the loss of income due to the rent differential of \$100.00 per month for the remainder of the term. However, in his application the landlord has applied for \$200.00 towards the loss he suffered from lowering the rent from \$1,900.00 to \$1,800.00,

The landlord has also applied for the recovery of the filing fee of \$100.00 and to retain the security and pet deposits in partial satisfaction of his claim.

Analysis

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 tenancy agreement on July 24, 2019 at which time the tenant paid the security and pet deposits. Pursuant to section 16, the rights and obligations of both parties took effect that date, even though the tenant never moved in. Once the 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 his losses by showing the suite and was able to find a tenant September 15, 2019. The new tenant paid \$900.00 for rent for September 2019. This resulted in a loss of income to the landlord of \$1,000.00.

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 the earliest time that the tenant could legally have ended the tenancy. Therefore, I find that the landlord is entitled to the income that he lost for the month of September 2019, in the amount of \$1,000.00.

Since the tenant breached the tenancy agreement, the landlord had insufficient time to find a tenant. The landlord lowered the rent by \$100.00 and was able to find a tenant for September 15, 2019.

RESIDENTIAL TENANCY POLICY GUIDELINE #3 addresses Claims for Rent and Damages for Loss of Rent.

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. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of \$1000.00 per month abandons the premises in the middle of the second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month but only at \$50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premises were abandoned and the \$50.00 difference over the remaining 10 months of the original term.

In this case, I find that by ending the tenancy prior to the end date of the fixed term, the tenant breached the fixed term tenancy resulting in a loss of \$100.00 per month for the remainder of the term. The tenant ended the tenancy in the first month and therefore the landlord suffered a loss of \$100.00 per month for the subsequent 11 months of the term. I find that the landlord is entitled to recover the loss of income incurred by him in the amount of \$1,100.00.

Since the landlord has proven his claim, I grant him the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim of \$1,000.00 for loss of income for September 2019, \$1,100.00 for loss of income for the remainder of the fixed term plus \$100.00 for the recovery of the filing fee for a total claim of \$2,200.00.

I order that the landlord retain the security and pet deposits of \$1,900.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$300.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord may retain the security and pet deposits of \$1,900.00. I grant the landlord a monetary order in the amount of \$300.00.

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: November 21, 2019

Residential Tenancy Branch