



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*. The landlord applied for a monetary order for loss of income, the filing fee and to keep the security and pet deposits in satisfaction of her claim.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

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

Background and Evidence

On or about June 15, 2019, the tenant paid security and pet deposits in the total amount of \$1,350.00 plus \$1,350.00 for the first month's rent, so that the landlord would hold the rental unit for a tenancy that would start on July 01, 2019. There was no written tenancy agreement.

The parties could not agree whether the tenancy was a month to month tenancy or was for a fixed term of one year. The landlord stated that her advertising and the conversation by text message with the tenant, referred to a one-year fixed term.

The tenant denied having agreed to a one-year fixed term and stated that she was under the impression that the terms of the tenancy agreement would be discussed and finalized at the time the contract was signed.

On June 25, 2019, the tenant informed the landlord that she would not be moving into the rental unit. The landlord stated that she started advertising the availability of the rental unit immediately but was unable to find a suitable tenant to move in prior to September 24, 2019. The landlord stated that she used popular internet websites to advertise the vacancy.

The tenant stated that there is a shortage of rental units in the city that they live in and if the landlord had advertised in the local newspaper, she would have found a new tenant. The landlord stated that the rental unit is unaffordable for most residents of the city and catered to people with high paying jobs. The tenant stated that there are many students who are looking for rental accommodation.

The landlord is claiming loss of income for the period of July 01, 2019 to September 24, 2019 in the amount of \$3,745.00 plus \$100.00 for the recovery of the filing fee. The landlord is currently holding \$1,350.00 for rent for July 2019 plus \$1,350.00 for security and pet deposits.

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 June 15, 2019 at which time the tenant paid the security and pet deposits plus rent for the first month of the tenancy, that was due to start on July 01, 2019. Pursuant to section 16, 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 for a tenancy that was due to start on July 01, 2019. On June 25, 2019, the tenant gave the landlord notice to end the tenancy.

The tenant agreed to allow the landlord to keep the first month's rent even though she was not going to move in. The tenant requested the return of the deposits and in a note dated June 27, 2019 the tenant provided the landlord with a forwarding address. The landlord made this application on August 14, 2019.

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.

In order to determine when the tenant could legally have ended the tenancy, I must decide whether the tenancy was a month to month tenancy or was for a fixed term of one year. The parties offered contradictory testimony and did not have a meeting of the minds regarding the term of the tenancy.

The landlord stated that all her advertising for a tenant was clearly for a one-year fixed term and her conversations with the tenant by text message also always referred to the one-year term. The tenant stated that she did not agree to a one-year term and stated that she understood that the length of the term would be discussed and finalized along with other terms at the time the parties signed a tenancy agreement.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

Based on the above, and in the absence of a signed tenancy agreement or a text message from the tenant agreeing to a one-year term, I find that the landlord has not proven that the tenancy was for a fixed term of one year. Accordingly I find that the tenancy was a month to month tenancy and that the tenant was required to provide one clear month of notice to end the tenancy.

I find that the landlord did make efforts to mitigate her losses and therefore she is entitled to rent for the month of July even though the tenant did not move into the rental unit.

However, I also find that the landlord had the option of renting to students who could have shared rent as roommates but chose not to explore that option. The landlord also stated that she was only looking for a tenant who would rent for a fixed term lease of one year.

The landlord stated that she found a tenant for September 24, 2019 and is claiming loss of income for August 01 to September 24, 2019. Since the landlord has not proven that the tenancy was for a fixed term of one year, the landlord is only entitled to the loss of income that she incurred for the month of July 01, 2019 in the amount of \$1,350.00. I find that the landlord is not entitled to the loss of income for the remainder of the period that the unit remained vacant.

Since the landlord has proven a portion of her claim, I award the landlord the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim of \$1,450.00 and is holding \$2,700.00 for deposits and rent. The landlord may retain her claim of \$1,450.00 and must return the balance of \$1,250.00 to the tenant. Accordingly, I grant the tenant a monetary order under section 67 of the *Residential Tenancy Act*, for this amount. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of \$1,250.00.

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: December 09, 2019

Residential Tenancy Branch