



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 for Dispute Resolution by the landlord for a monetary order for compensation for loss under the Act, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Both parties appeared, gave testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing

Issues to be Decided

Is the landlord entitled to compensation for loss under the Act?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a six-month fixed term tenancy which commenced on October 23, 2019 and was to end on April 30, 2020. Rent in the amount of \$2,300.00 was payable on the first of each month. A tenant's portion of the security deposit was \$350.00. The tenancy ended on October 24, 2019.

The landlord testified that they entered into a tenancy agreement with the tenant and two other co-tenants. The landlord stated that there was a disagreement between the co-tenants such a shared spaced and bedrooms.

The landlord testified that the tenant PT informed them that they would be moving out. The landlord stated that this left the other co-tenants in a position that their tenancy had ended, and they could not afford to enter into a new tenancy agreement without finding a new co-tenant. The landlord stated that co-tenants found a new renter; however, the new renter could not afford to pay the same rent.

The landlord testified that they had to accept a lower rent of \$2,100.00, and a new tenancy agreement was signed on October 31, 2019. The landlord seeks to recover the difference between the tenants rent of \$2,300.00 and the new tenancy agreement rent of \$2,100.00 for the six months. The landlord seeks to recover the total amount of \$1,200.00.

The tenant testified that they were told verbally that they could end the tenancy at anytime without any penalty. The tenant stated the tenancy agreement signed on October 24, 2019, should be annulled as the landlord breached their verbal agreement made on October 21, 2019.

The landlord argued that they never told the tenant that they could breach their lease without any penalty. The landlord stated that they did mention that if the tenants found long term housing closer to the end of the fixed term agreement that they may be able to accommodate one months notice.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

I do not accept the tenant's evidence that the written tenancy agreement that was signed by the parties on October 23, 2019, is not valid. Any discussion that may have occurred prior to the agreement does not supersede the signed contract. I find the fixed term agreement signed on October 23, 2019, is binding on the parties.

The Residential Tenancy Act states - Tenant's notice

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(b) is **not earlier than the date specified in the tenancy agreement** as the end of the tenancy

In this matter, the tenant was having issues with their co-tenants. The tenant and the co-tenants should have discussed their living situation between themselves prior to entering in the signed tenancy agreement. The tenant ended the co-tenancy when they vacated on October 24, 2019. Leaving the remaining tenants unable to meet their obligations under the Act. I find the tenant has breached section 45 of the Act as the earliest date that they could have legally end the tenancy was April 30, 2020.

The evidence of the landlord was that the remaining co-tenants wanted to stay if they could find someone else to lease the premise with them. The evidence was that they found a new renter; however, they could not pay the tenant's portion of rent and a lower amount was negotiated. A new tenancy agreement was signed on October 31, 2019 and rent payable was the amount of \$2,100.00.

I find the landlord did suffer a loss because of the actions of the tenant. I find the landlord made reasonable effort to minimize the loss by accepting a lower rent. I find the landlord is entitled to receive the difference between what they would have received from the defaulting tenant (\$2,300.00) and what they were able to re-rent the premises for (\$2,100.00). Therefore, I find the landlord is entitled to recover the difference in the amount of **\$1,200.00**.

I find that the landlord has established a total monetary claim of **\$1,300.00** comprised of the above amount and the \$100.00 fee paid for this application.

I order that the landlord retain the deposit of **\$350.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$950.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenant is cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary order and may keep the security deposit as partial satisfaction of the claim and is granted an order for the balance due.

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: March 24, 2020

Residential Tenancy Branch