



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD

Introduction

This hearing dealt with an application by the tenant pursuant to the *Residential Tenancy Act* for a monetary order for the return of the security deposit.

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. The parties represented themselves.

This matter was scheduled to be heard on June 11, 2020. The landlord had also made application to retain a portion of the security deposit and this was scheduled to be heard this date June 02, 2020. Since both parties have applied for the same remedy at the same rental unit, I offered to hear both applications together. The parties agreed.

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. The parties represented themselves.

As both parties were in attendance, I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence and agreed that she had served her evidence on the landlord just the night before this hearing. I find that the tenant was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issue to be Decided

Did the tenant provide the landlord with her forwarding address in writing? Did the landlord return the security deposit in a timely manner?

Background and Evidence

The background facts are generally undisputed. On March 17, 2020, the tenant paid a security deposit in the amount of \$1,200.00 to the landlord, to hold the rental unit so that she could move in on April 01, 2020. The monthly rent was \$2,400.00 payable on the first of each month. The tenancy was a fixed term tenancy with an end date of March 31, 2021.

The tenant testified that on March 24, 2020, due to unavoidable circumstances, she decided not to rent this unit and informed the landlord of her decision. The landlord testified that she took immediate action and advertised the availability of the rental unit. The landlord filed copies of the advertisements. In order to find a new tenant for April 2020, the landlord offered a promotional lower rent for the first two months. The landlord found a new tenant who accepted the offer and agreed to move in on April 01, 2020 at a reduced rent of \$800.00.

The landlord testified that she suffered a loss of income in the total amount of \$800.00 from receiving lower rent for the first two months of the new tenancy. The landlord filed documents to support her loss of income. The landlord stated that she felt it was appropriate to split the loss with the tenant and to recover just the loss of income incurred for April 2020, from the tenant. On March 30, 2020, the landlord returned \$800.00 to the tenant after retaining \$400.00 from the deposit of \$1,200.00.

In an email dated April 29, 2020, the landlord requested the tenant to provide her with a forwarding address to enable the landlord to file for dispute resolution. The tenant replied that same day with her forwarding address and a request for the return of the balance of the security deposit. The landlord an application to retain a portion of the deposit on May 01, 2020.

The tenant has applied for the return of the balance of the security deposit. The tenant agreed that she has already received \$800.00 from the landlord.

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.

On March 17, 2020, the parties entered into a fixed term tenancy agreement at which time the tenant paid the security deposit. 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 fixed term tenancy agreement with an end date of March 31, 2021 and ended the tenancy prior to the end date of the fixed term. The tenant also failed to give the landlord adequate notice to end the tenancy. I find that the tenant breached the tenancy agreement.

Section 7 of the Act provides:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*
- (2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

Based on the testimony and documentary evidence of the landlord, I find that the landlord made efforts to mitigate her losses by advertising the vacancy and showing the suite in a timely manner. The landlord also offered to accept a lower rent for the first two months. The landlord was able to find a tenant for April 01, 2020 at a lower rate. The new tenant paid a monthly rent of \$800.00 for the months of April and May 2020. This resulted in a loss of income to the landlord in the amount of \$800.00.

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.

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 \$400.00 per month for the first two months of the new tenancy.

I find that the landlord made sufficient efforts to mitigate her losses and is therefore entitled to recover the loss of income incurred by her in the amount of \$800.00. Since the landlord agreed to recover only \$400.00 of her total loss, I find that the tenant is obligated to cover the loss of income in the amount of \$400.00 and is entitled to the return of \$800.00.

The tenant agreed that she has already received \$800.00 from the landlord and therefore the tenant is not entitled to any further claims against the security deposit.

Conclusion

The tenant's claim is dismissed in its entirety.

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: June 02, 2020

Residential Tenancy Branch