



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDL-S, MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to the Landlord's Application for Dispute Resolution, in which the Landlord applied for a monetary Order for money owed or compensation for damage or loss, to keep all or part of the security deposit, and to recover the fee for filing this Application for Dispute Resolution.

The Landlord stated that sometime in February of 2020 the Dispute Resolution Package and the evidence the Landlord submitted to the Residential Tenancy Branch in February of 2020 were sent to the Tenant, via registered mail.

The Tenant stated that she received the evidence submitted by the Landlord. As the Tenant acknowledged receipt of this evidence, it was accepted as evidence for these proceedings.

The Tenant stated that she did not receive the Dispute Resolution Package from the Landlord. She stated that after she received the Landlord's evidence, she arranged to receive the Dispute Resolution Package from the Residential Tenancy Branch. She stated that she has had sufficient time to consider the Landlord's Application for Dispute Resolution, that she does not require an adjournment for the purposes of considering the Application for Dispute Resolution, and that she is prepared to proceed with the hearing.

On May 21, 2020 the Tenant submitted evidence to the Residential Tenancy Branch. The Tenant stated that this evidence was served to the Landlord, via registered mail, on May 25, 2020. The Landlord acknowledged receiving this evidence and it was accepted as evidence for these proceedings.

The parties were given the opportunity to present relevant oral evidence, to ask relevant questions, and to make relevant submissions. Each party affirmed that they would provide the truth, the whole truth, and nothing but the truth at these proceedings.

Preliminary Matter #1

This tenancy was the subject of a previous dispute resolution proceeding on January 13, 2020, the file number of which appears on the first page of this decision.

In that decision a Residential Tenancy Branch Arbitrator ordered the Landlord to return double the amount of the security deposit to the Tenant.

As the security deposit has been ordered returned to the Tenant, I do not have authority to grant the Landlord the right to retain the security deposit. I therefore decline to consider the Landlord's application to retain the security deposit.

Preliminary Matter #2

With the consent of both parties, the Application for Dispute Resolution was amended to remove the name of the second Respondent.

Issue(s) to be Decided

Is the Landlord entitled to compensation for loss of revenue?

Background and Evidence

The Landlord and the Tenant agree that on August 01, 2019 the Tenant signed an "Application for Tenancy", a copy of which was submitted in evidence. This application form declares that:

- If the application is accepted, it becomes a binding agreement and that the applicant will sign a tenancy agreement;
- if the applicant does not sign the tenancy agreement or move into the rental unit, the applicant will be liable for the payment of the equivalent of one month's rent and related expenses,
- rent will be \$1,225.00 per month;

- occupancy is “desired” on September 01, 2019;
- the Landlord signed the application form on August 06, 2019; and
- The Tenant will pay a security deposit of \$612.50 if the “offer is accepted”.

The Landlord and the Tenant agree that:

- The tenancy was to begin on September 01, 2019;
- The Tenant paid the security deposit of \$612.50;
- Rent was due by the first day of the month; and
- The Tenant did not move into the rental unit.

The Tenant stated that the security deposit was paid on August 06, 2019. The Landlord stated that he thinks it was paid on August 15, 2019. They agree that the deposit was paid for the purposes of securing the rental unit.

The Tenant stated that on August 08, 2019 she told the building manager, by telephone, that she would not be moving into the rental unit. The Landlord stated that he believes the Tenant told the building manager, by telephone, that she would not be moving into the rental unit approximately three days prior to the start of the tenancy.

The Tenant stated that on August 13, 2019 she told the building manager, by email, that she would not be moving into the rental unit. The Landlord stated that he believes the Tenant told the building manager, by email, sometime after the aforementioned telephone conversation.

The Landlord is seeking compensation, in the amount of \$1,837.50, in lost revenue for the period between August 15, 2019 and September 30, 2019.

The Landlord stated that on September 01, 2019 the rental unit was advertised on his company website, on Craigslist, and Kijiji. The Landlord submitted no evidence to support this testimony.

The Tenant stated that she regularly checked Craigslist in August and in early September of 2019 and was unable to locate any listings for the unit. The Tenant submitted a screen shot of the available rentals for the area, which was taken on September 03, 2019. This screen shot does not show any available listings for the street on which the unit is located.

The Landlord argued that the screen shot is not accurate and that the image could have been falsified.

The Landlord stated that the unit was re-rented for October 15, 2019.

Analysis

I find that on August 01, 2019 the Tenant signed an "Application for Tenancy", which declared that it becomes a binding agreement and that the applicant will sign a tenancy agreement of the application is accepted by the Landlord. I find that the Landlord accepted the application for tenancy when it was signed on August 06, 2019. I therefore find that on August 06, 2019 the parties entered into a tenancy agreement.

On the basis of the information provided in the application form, I find this tenancy was to begin on September 01, 2019 and that the Tenant was to pay monthly rent of \$1,225.00.

In concluding that the parties entered into a tenancy agreement I was influenced, in part, by the fact the Tenant paid, and the Landlord accepted, a security deposit. I find this clearly indicates that both parties wished to proceed with the tenancy.

When making a claim for damages under a tenancy agreement or the *Residential Tenancy Act (Act)*, the party making the claim has the burden of proving their claim. Proving a claim in damages includes establishing that damage or loss occurred; establishing that the damage or loss was the result of a breach of the tenancy agreement or *Act*; establishing the amount of the loss or damage; and establishing that the party claiming damages took reasonable steps to mitigate their loss.

I favour the testimony of the Tenant, who stated that she gave verbal notice of her intent to end the tenancy on August 08, 2019, over the testimony of the Landlord, who declared that the verbal notice was given shortly before the start of the tenancy. In reaching this conclusion I was heavily influenced by the email submitted in evidence, dated August 08, 2019.

I favour the testimony of the Tenant, who stated that she gave written notice of her intent to end the tenancy on August 13, 2019, over the testimony of the Landlord, who declared that the written notice was given shortly before the start of the tenancy. In reaching this conclusion I was heavily influenced by the email submitted in evidence, dated August 13, 2019.

I find that the Tenant did not comply with section 45(1) of the *Act* when she ended this tenancy without providing written notice of her intent to end the tenancy on a date that is

later than one month after the date the landlord receives the notice, and is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

To be compliant with section 45(1) of the *Act*, the written notice to end the tenancy the Tenant gave on August 13, 2019 would serve to end the tenancy on September 13, 2019, presuming that rent was due on September 14, 2019. In these circumstances the parties agree that rent would have been due by the first day of each month, so the August 13, 2019 notice would have ended the tenancy on September 30, 2019.

As the Tenant was not intending to move into the rental unit on August 15, 2019, I find that the Landlord would not have generated revenue for the month of August of 2019, even if the tenancy proceeded. I therefore dismiss the Landlord's application for lost revenue for any portion of August of 2019.

I find that the Landlord would have received rental income of \$1,225.00 if the tenancy had proceeded on September 01, 2019 and that the Landlord suffered lost revenue for September because the Tenant did not give proper notice to end the tenancy.

Section 7(2) of the *Act* stipulates, in part, that a landlord who claims compensation for damage or loss that results from a tenant's non-compliance with the *Act*, the regulations, or their tenancy agreement, must do whatever is reasonable to minimize the damage or loss. The burden of proving he took reasonable steps to minimize his loss rests with the Landlord.

I find that the Landlord has submitted insufficient evidence to show that he advertised the rental unit on September 01, 2019. In reaching this conclusion I was influenced by the absence of any documentary evidence that corroborates his testimony that the unit was advertised on three different websites.

Conversely, I find that the screen shot of the Craigslist listing of rentals for that area, taken on September 03, 2019, shows no available listings for the street on which the unit is located. I find that this evidence refutes the Landlord's testimony that it was posted on September 01, 2019.

Although I accept the Landlord's submission that the screen shot could have been falsified, I have no evidence that it was. Although the Landlord argued that the screen shot is not accurate, I find that his testimony is insufficient to support that conclusion.

As the Landlord has submitted insufficient evidence to establish that he advertised this rental unit in a reasonably timely manner, I find that he has failed to establish that he took reasonable steps to mitigate the lost revenue he experienced. As the Landlord failed to establish mitigation, I dismiss his claim for lost revenue for September of 2019.

I find that the Landlord has failed to establish the merit of his Application for Dispute Resolution and I dismiss his application to recover the fee for filing this Application for Dispute Resolution.

Conclusion

The Landlord has failed to establish a monetary claim and I dismiss the Application for Dispute Resolution, without leave to reapply.

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: June 26, 2020

Residential Tenancy Branch