

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with cross applications. The landlord is seeking a monetary order of unpaid rent as compensation for damage or loss and an order to retain the security deposit in partial satisfaction of the claim. The tenant is seeking an order to have the security deposit returned. Both parties participated in the conference call hearing. Both parties gave affirmed evidence.

Issue to be Decided

Is either party entitled to any of the above under the Act, the regulations or the tenancy agreement?

Background, Evidence

The tenancy began on November 1, 2010 and ended on February 28, 2011, it was to be a fixed term tenancy for one year. The tenants were obligated to pay \$1200.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$600.00 security deposit.

The landlord testified to the following; the tenant gave one months' notice on January 28, 2011, the landlord made many attempts to rent the unit however was unsuccessful for two months, the landlord eventually did rent the unit for \$1000.00. The landlord is seeking compensation for loss of revenue the equivalent to one months' rent and liquidated damages for breaking the lease.

The tenant testified that a move in condition inspection report was not done and is seeking the return of the security deposit and compensation for taking time off of work to prepare for this hearing in the amount of 2 hours X \$16.00 per hour = \$32.00

Analysis

The landlord didn't dispute that a move in condition inspection was not conducted. Section 35(2) of the Act states that a "landlord must offer the tenant at least two opportunities, as prescribed, for the inspection. The tenant has proven this portion of their claim and is entitled to \$600.00. The tenant was also seeking compensation for

taking time off of work. The Act does not provide compensation for the costs of litigation and I therefore dismiss that portion of the tenant's application.

The tenant did not dispute the fact that she initiated the termination of the tenancy prematurely. In her testimony she stated that she was unhappy living there and wanted to move. The tenant gave testimony that she was aware of the landlord's efforts to try to re-rent her unit and in fact provided documentary evidence to the fact. I find the landlords have made every reasonable effort to mitigate their losses and are entitled to compensation of one month's rent \$1200.00 as per Section 3 of the *Residential Tenancy Policy Guidelines*. The landlord was also seeking liquidated damages for the tenant breaking the lease. The landlord did not provide any documentary evidence to support this and I dismiss that portion of their claim.

As both parties have been partially successfully, I order that both parties bear the costs of filing.

Section 72 of the Act allows the offsetting of payments and I do apply that in this case in the following manner:

The landlord has established a claim for \$1200.00. I order that the landlord retain the \$600.00 deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$600.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

The landlord is entitled to a monetary order of \$600.00

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: June 24, 2011.

Residential Tenancy Branch