



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the tenant's Application for Dispute Resolution, in which the tenant has requested compensation for damage or loss under the Act and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the tenant entitled to return of pro-rated July 2012 rent in the sum of \$794.84?

Is the tenant entitled to filing fee costs?

Background and Evidence

The parties agreed to the following facts:

- The tenancy commenced on August 1, 2011;
- The tenancy was a fixed-term, ending July 31, 2012;
- The tenancy could then continue on a month-to-month term;
- That the parties did not sign a mutual agreement to end the tenancy, and
- The tenant gave written notice on June 30, 2012, that she would vacate effective July 31, 2012.

The tenant said that in mid-June she had reached a verbal agreement with the landlord allowing her to end the tenancy early. The tenant and landlord had also agreed to seek

new occupants for the unit, but the landlord had not made adequate efforts and had not responded to individuals who the tenant had identified as possible occupants. The tenant had entered into another tenancy, that was to commence July 1, 2012, but as a result of the landlord's failure to seriously seek new occupants, the tenant had to pay rent for 2 units in July.

The tenant did not obtain the landlord's written permission to end the tenancy effective July 1, 2012, but was of the understanding that she was free to end the tenancy at that point.

The tenant is requesting return of the pro-rated sum of rent paid for all but 3 days of July, 2012.

The landlord agreed that she had told the tenant if suitable occupants had been located the tenant was welcome to vacate earlier than the end of the fixed term. The landlord had also warned the tenant that such short notice could result in a failure to locate occupants who could take possession effective July 1, 2012.

The landlord did check 1 potential male occupant but discovered he had not been honest about his renting and home ownership past; he was rejected. A 2nd potential occupant did not call the landlord.

Analysis

Section 45 of the Act allows a tenant to end a fixed term, by giving written notice for the last day of the fixed term. The tenant gave proper written notice, as required by the Act.

There were most definitely discussions in relation to the tenant's desire to locate a new occupant so she could vacate by June 30; but there was no evidence before me that the tenant and landlord had signed a mutual agreement, ending the tenancy effective June 30, 2012. In the absence of a written agreement to end the tenancy early, I have relied upon the written tenancy agreement, which allowed the tenant to give notice ending the tenancy on July 30, 2012; the earliest date she could do so.

I find that the loss the tenant has claimed resulted from her decision to accept a 2nd tenancy effective July 1, 2012. The loss is not one which the landlord must assume; the absence of a written agreement ending the tenancy places the loss on the tenant. The landlord did consider individuals who were proposed as potential occupants and had the right to reject any that did not meet her satisfaction; there was no evidence before me that she had been unreasonable in her assessment of the 1 male who had shown interest.

I find that the tenant's decision in mid-June, to accept another tenancy effective July 1 gave little time to locate an occupant effective July 1, 2012. The landlord had warned the tenant this could be difficult but that she would cooperate to assist the tenant by

assessing potential occupants. The landlord was not required to hurry her selection process and had the right to fully assess those who might wish to rent her unit.

Therefore, as the loss incurred was the result of the tenant choosing to terminate her fixed-term prior to the date it ended and, in the absence of a written mutual agreement ending the tenancy, I find that the tenant's application is dismissed.

Conclusion

The application is dismissed.

Dated: December 31, 2012.

Residential Tenancy Branch