



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNR MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent owed and an order to retain the security deposit in partial satisfaction of the claim. Both landlord and tenant were in attendance and each gave affirmed testimony in turn.

Issue(s) to be Decided

The application indicated that the landlord is seeking a monetary order claiming \$2,212.50.

The issues to be determined based on the testimony and the evidence are:

- Whether the landlord is entitled to monetary compensation under section 67 of the *Act* for damages or loss. This determination is dependant upon answers to the following questions:
 - Has the landlord submitted proof that the claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act* by establishing on a balance of probabilities:
 - a) that the loss was caused by the tenant's violation of the *Act* or agreement
 - b) proof of the actual amount of the loss incurred
 - c) that the landlord fulfilled the obligation under section 7(b) of the *Act* to do what ever is reasonable to mitigate the costs

- Whether or not the Landlord is entitled to retain the security deposit or any portion thereof.

The burden of proof regarding the above is on the landlord/claimant.

Background and Evidence

The landlord submitted into evidence blank unsigned copies of a lease agreement and other documents. The landlord testified that the tenants signed a fixed term tenancy with rent of \$1,475.00 per month starting on August 1, 2008 and expiring on June 30, 2009. The landlord testified that on or around November 5, 2008, the tenant's cheque for November was returned. However, the tenant later paid the rent for November. The landlord testified that around the time that he found out that the cheque failed to clear, the landlord also had received a call from another landlord seeking a tenancy reference and thus became aware that the tenant had plans to move. The landlord stated that, written notification was not actually received from the tenant until November 16, 2008 when the landlord asked the tenant to provide this. The landlord testified that by that date, the tenants had already vacated the unit and that advertising to re-rent commenced as of November 18, 2008 on Craig's list and also in the local paper the following week with a fifty-dollar rental rate reduction.

The landlord testified that the unit had finally been rented for February 1, 2008, presuming that the current applicant successfully passes screening. However, this tenancy agreement was for a lesser rental rate set at \$1,325.00. The landlord acknowledged that sometime in November the landlord was apprised that the tenant had complained about a mould issue in the attic and that steps to address this were commenced immediately upon becoming aware of the issue. The landlord testified that the tenant broke the lease and that the losses incurred included \$1,475.00 loss of rent for December 2008, \$1,475.00 loss of rent for January 2009 and other losses not claimed which included \$150.00 less rent per month for the remaining 5 months of the fixed term and carpet cleaning costs of \$159.85 pursuant to a verbal term agreed upon by the parties.

No evidence was submitted by the tenant. However, the tenant acknowledged that the tenant did end the tenancy prior to the expiry of the tenancy agreement and offered the following defenses testifying that:

- One-month's written notice was given to the property manager by email on October 31, 2008
- The tenancy was ended by the tenant due to an unaddressed mould situation reported to the landlord in November 2008
- The tenant was granted verbal permission by the property manager that the tenant could end the tenancy prior to the expiry date of the fixed term without being held liable for damage or losses resulting from the early termination of the agreement.

Analysis

In regards to the loss of rent for the month of December, 2008 and January 2009, I note that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or the tenancy agreement.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.

4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

Based on the testimony and the evidence, I find that the landlord has established that there were some losses and that these losses resulted from a violation of the tenancy agreement by the tenant. I find that the landlord has established that the landlord suffered a loss of two months rent because the tenant terminated the fixed term prematurely and the unit remained unoccupied for two months. This leaves the final element of the test for damages to be satisfied, which is whether the landlord fully met the landlord's burden of proof that reasonable steps were taken to mitigate or minimize the loss or damage. The landlord's testimony was that advertisements were immediately placed on Craig's List and later in the newspaper. Unfortunately, the landlord did not furnish copies of the ads or invoices to prove that the unit was advertised. That being said, it is clear that some effort were made to re-rent the unit, given that a willing tenant has recently made a commitment to take possession on February 1, 2008. The fact that according to the landlord's testimony, measures were taken to reduce the rent in order to find an occupant, supports the claim that the landlord made reasonable attempts to mitigate losses.

I find that the defences offered by the tenant do not serve to shield the tenant from liability for the landlord's losses. Ending a tenancy due to condition or repair issues is considered to be a last resort. There is an expectation that before the tenant commits a breach of the agreement, the tenant would first report the problem and afford the landlord a reasonable amount of time to rectify the problem. The tenant also has the option of making an application for dispute resolution over the matter. In this situation the existence of a genuine mould problem was acknowledged by both parties. However the fact that mould was present does not automatically grant a tenant the right to unilaterally end the tenancy and vacate. A fixed term tenancy can be ended by the tenant, but the tenant will still be responsible for any damages and losses that stem from

breaching the agreement as sections 7 and 67 of the Act makes clear. In any case, the amount of notice to be given by a tenant under the Act in ending a tenancy does not apply to a fixed term tenancy. In regards to the tenant's claim that verbal permission along with some sort of exemption in regards to the tenant's liability was given by the property manager, I find that such an agreement would need to be in written form signed by the landlord, then submitted into evidence and served on the other party in order to be validly considered at this hearing.

Given the evidence and testimony of the parties, I find that the landlord has established entitlement for the loss of rent for the month of December 2008 in the amount of \$1,450.00. I also find that the landlord is entitled to the equivalent of one-half a month's rent for the month of January 2009 in the amount of \$737.50. Finally I find that the landlord is entitled to be reimbursed for the \$50.00 cost of filing this application, for total monetary compensation of \$2,262.50. I order that the landlord retain the security deposit and interest of \$742.12 in partial satisfaction of the claim leaving a balance due of \$1,520.38.

Conclusion

I hereby grant the landlord a monetary order under section 67 for \$1,520.38. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Dated: January 2009