



Dispute Resolution Services

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

Decision

Dispute Codes: MNDC MNR MNSD FF

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for \$1,500.00 rent owed for the month of December 2008, \$1,500.00 loss of rent for the month of January 2009, \$1,200.00 loss of rent from February 1, 2009 until lease expiry date of July 31, 2009 to compensate for lower rental rate to obtain new tenants, \$150.00 cleaning costs for 4 hours cleaning at \$30.00 per hour, \$183.50 for the cost of carpet cleaning and the \$50.00 paid to file this application.

The landlord testified that the Notice of Hearing was served by registered mail to an address given verbally by the tenant. The landlord did not provide the tracking number, but stated that this mail was not picked up and was returned to sender. The landlord also sent the package by registered mail to the address of the former rental unit, on January 7, 2009 with the hope that the package would be forwarded by the post office and provided the tracking number. The tenant did not appear.

Issue(s) to be Decided

The landlord was seeking a monetary order for loss of rent due to the tenant ending the fixed term tenancy early. 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 loss of rent and cleaning costs. This determination is dependant upon answers to the following questions:

- Has the landlord submitted proof that a claim for damages or loss is supported pursuant to *section 7* and *section 67* of the *Act*?
- Has the landlord submitted proof verifying the amounts lost or expended.
- Has the landlord met the requirement under section 7(2) of the Act to do whatever is reasonable to minimize the damage or loss?

Background and Evidence

The landlord testified that the tenancy began as a fixed term tenancy on August 1, 2008 that was to expire on July 31, 2009 and that the tenant paid a security deposit on July 10, 2008 in the amount of \$750.00. The landlord testified that the tenant contacted the landlord on October 31, 2008 to advise that the tenant was vacating the unit and a move-in inspection report was conducted on November 7, 2008. The landlord testified that the tenant paid rent for the month of November 2008, but that despite advertising the unit on the company website and in the local newspaper, the landlord was unable to obtain a new tenant to rent the unit until February 2009. No copies of the advertisements were submitted into evidence by the landlord. Because the unit was not rented, the landlord is claiming loss of rent of \$1,500.00 for the month of December 2008 and \$1,500.00 rent for the month of January 2009. The landlord testified that in order to secure the new tenant for February 1, 2009, the rent had to be reduced in the amount of \$200.00 per month and the landlord is also therefore claiming compensation for the loss of rent of \$1,200.00 for the period from December 1 2008 until July 31, 2009. The landlord did not provide a copy of the lease in question.

The landlord submitted into evidence a copy of the tenancy agreement and the move-in and move-out inspection report. The move-in inspection date was shown as July 30, 2008 and the tenant signed the move-in inspection report. The move-out inspection was dated November 7, 2008 and was unsigned by the tenant. Also submitted into evidence was a copy of the "Security Deposit Statement" showing a move-out date of November 6, 2008 and rent charges of \$3,000.00 for December and January, lost rent

of the difference in rental rate charged to the new tenant for the months from February 1, 2009 until July 31, 2009 totaling \$1,200.00, cleaning of \$150.00 and carpet cleaning of \$175.00. I note that this document was submitted into evidence on December 18, 2008, shows not forwarding address for the tenant and was unsigned by the tenant.

Analysis

Monetary Order for Loss of Rent

In regards to an Applicant's right to claim damages from the another party, Section 7 of the Act states that 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. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

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, to prove the existence of the loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent. Once that has been established, the claimant must then provide evidence to verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to mitigate the damage or losses that were incurred.

In applying element 2 of the test for damages, I accept the landlord's testimony that the tenant's ending of the tenancy prior to the end of the tenancy agreement was a violation by the tenant of the terms of the agreement.

The landlord has testified that because of this violation, loss of rent for the month of December 2008 and January 2009 occurred. However, on the question of the claimed losses, there was no evidence submitted to verify that the tenant's violation resulted in the loss being claimed. I note that the tenant paid for the full month of November 2008 and left the unit vacant from November 6 2008, during which time the landlord would presumably have shown the unit to prospective tenants in order to mitigate the potential losses. The landlord's testimony that the reasonable efforts that were made to rent the unit had entailed two and a half months of effort before finally finding a new tenant would need to be supported with documentary evidence before such a claim could be accepted. The landlord's verbal testimony was that this occurred, but this falls short of the standard of proof required to satisfy element 3 and 4 of the test for damages. Accordingly, I find that this portion of the landlord's claim must be dismissed.

The landlord also gave verbal testimony that, in order to secure the new tenant, it was necessary to lower the rental rate by \$200.00 per month resulting in a loss of \$1,200.00 over the remaining six months of the fixed term. Due to the lack of evidentiary support for this claim, it therefore fails to satisfy elements 2 and 3 of the test for damages. In

addition, I find that this loss was documented on the undated "*Security Deposit Statement*" that was submitted into evidence on December 18, 2008. I find that the landlord's imposition of these charges on to the tenant prior to December 18, 2008 was premature in terms of the landlord's obligation under the Act to make reasonable efforts to mitigate and therefore element 4 of the test for damages has also not been met.

In regards to the claim of \$150.00 for cleaning and \$175.00 for carpet cleaning, the amounts were not verified sufficiently to meet element 3 of the test for damages and this claim can not be accepted in the absence of the invoices detailing this labour.

Therefore I find that the landlord's total loss for which the tenant should be held accountable is set at \$500.00 which is the liquidated damages indicated in the tenancy agreement charged for ending the tenancy prior to the expiration of the fixed term.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to a total monetary claim in the amount of \$550.00 comprised of liquidated damages of \$500.00 and the \$50.00 fee paid for this application. I order that this amount be retained from the tenant's security deposit and interest of \$755.38 leaving a balance in favour of the tenant of \$255.38, which must be refunded to the tenant by the landlord forthwith.

Dated: January 2009