



Dispute Resolution Services

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

Decision

Dispute Codes:

MNDC Money Owed or Compensation for Damage or Loss

FF Recover the Filing Fee for this Application from the Respondent

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for loss of rent and damages stemming from the tenant ending the fixed term tenancy prematurely.

Both the landlord and tenant was present and each gave affirmed testimony in turn.

Issue(s) to be Decided

The landlord was seeking a monetary order for loss of rent due to the tenant ending the tenancy prior to the end of the fixed term tenancy for a claim of \$3,592.32.

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 rental arrears owed, damages or loss of rent. 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 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 submitted into evidence a copy of the tenancy agreement, condition inspection report, copies of invoices, copies of email communications between the parties, a copy of a management contract between the landlord and a realty company, copies of advertisements, copies of on-line advertising and a sworn statement from the property manager.

The tenant submitted into evidence a written statement taking issue with alleged tampering with and omission of evidence by the landlord and pointing out that the security deposit exceeded that permitted under the Act. Also placed in evidence were copies of the disputed email, copies of advertisements, copies of information sheets about the Act, a written statement of defense, copies of email correspondence between the parties, photographs documenting concerns about the building, copies of cheques, an emailed complaint from the tenant to the landlord dated October 23, 2008 with a response from the landlord dated October 29, 2008, a copy of an email from the tenant to the landlord dated November 2, 2008 indicating this was “*to give formal notice as of today for Dec 01, 2008*”, a copy of email from the landlord dated November 3, 2008 responding to the notice and a response from the tenant on the same date confirming that the tenant would be vacating the unit on December 1, 2008,. The email also advised the landlord to “*advertise immediately*” and expressed the tenant’s willingness to assist with re-renting. The evidence included an email from the landlord to the tenant requesting that the notice be in writing and signed.

The landlord was claiming a loss of rent of \$1,400.00 for the month of December 2008 and \$496.77 loss of rent for a portion of the month of January 2009. In addition, the landlord was requesting advertising costs of \$123.27 and \$26.20 and \$89.95 to replace the locks, for which invoices had been provided into evidence. Other costs being claimed by the landlord are, \$615.00 management fees to enlist a rental company, \$250.60 flight costs, \$125.35 motel costs, \$66.56 car rental costs, \$15.00 fuel costs, \$47.39 meal costs, \$48.00 parking costs and the \$50.00 fee for filing the application.

The landlord testified that the tenant signed a fixed-term tenancy for one year beginning on September 8, 2008 ending on August 31, 2009. However the tenant suddenly gave verbal notice that was confirmed by email on November 2, 2008, to end the tenancy effective December 1, 2008. The landlord testified that the landlord then spent some time trying to negotiate with the tenant with the hope of salvaging the tenancy, but finally, after speaking to the Residential Tenancy Branch, the landlord advised the tenant that the tenancy termination notice must be given in written form with a signature as required under the Act. The landlord testified that once the tenant had vacated the unit and the condition inspection was completed, attempts were made to re-rent the unit as soon as possible. The landlord testified that, despite the landlord's best efforts which included advertising in two different venues, the property was not re-rented until January 12, 2009, and the landlord incurred a loss of rent in the amount of \$1,400.00 for the month of December 2008 and \$496.77 for a portion of January 2009. In regards to the reason given by the tenant for ending the tenancy prior to the expiry of the term, the landlord testified that it was not possible to make any guarantees about the conduct of other residents and no representations were made about neighbouring residents at the time the tenancy was negotiated. The landlord testified that the landlord had no prior knowledge of any problems in the complex relating to students.

The landlord testified that in October, prior to ending the tenancy, the tenant did make a complaint about some contractors entering her unit without notice. The landlord testified that this matter was addressed immediately and the tenant was reimbursed for a new security lock.

The landlord testified that the tenant's act in ending the tenancy in violation of the agreement warranted compensation for loss of rent, the cost of the locks and advertising, as well as reimbursement for the landlord's expenses in traveling from out-of-province to conduct the move-out inspection and re-rent the unit. Receipts indicate that the amount claimed for transportation costs for two people amounted to a total of

\$552.90. The landlord also testified that the cost of a management company to handle the property was \$615.00. However, no invoice had been submitted.

The tenant testified that the tenant entered the contract with the expectation that the unit was in a quiet secure environment where the tenant could expect peaceful enjoyment of her home. The tenant testified that, however, she soon discovered that other residents in the complex included boisterous students who celebrated the new school term with get-togethers involving a large number of outside visitors, leading to thefts, vandalism and general disruption. The tenant testified that on occasion when the tenant returned home after working a late shift, she would find a stranger's vehicle parked in her designated spot. The tenant testified that one day contractors walked into her unit without any prior notice to address a building issue. The tenant testified that she did not make an application for dispute resolution to compel the landlord to comply with the provisions of the Act relating to a tenant's rights or to obtain an order to have the tenancy ended because she was not aware that this was an option. The tenant testified that, in fact, she had intended to "try and stick it out" but realized that the "dorm-like" culture of the complex would lower her quality of life and compromise her personal security so she felt that she had to vacate as soon as possible. The tenant submitted photographs to illustrate propped-open doors and beer bottles strewn in the common areas. The tenant stated that she believed that the landlord knowingly misled her as to the character of the complex. The tenant testified that she gave the landlord notice early in November 2008 with the expectation that the landlord would act immediately to re-rent the unit. The tenant testified that she confirmed and re-confirmed her intentions to the landlord in writing via email that was received and responded to by the landlord. The tenant disputed the amount of the loss of rent being claimed on the basis that the landlord failed to properly mitigate the loss. The tenant pointed out that the unit was not advertised until the end of November despite the fact that the tenant was willing to assist and had actually vacated on November 16, 2008 having paid to the end of November. The tenant also disputed the costs of advertising, the landlord's claim for travel expenses and the cost of a management company.

The tenant testified that the landlord had violated the Act by over-charging the tenant for the security deposit in the amount of \$1,000.00 which represents more than the equivalent of one-half a month rent specified under the Act.

Analysis

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 damage/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 that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred.

I accept the landlord's testimony that it incurred a loss of rent for December 2008 and part of January 2009 and that element 1 of the test for damages has been met.

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 of the terms of the agreement. In respect to the allegation that the landlord contributed to the failure of the tenancy by misleading the tenant, I find that there is no way to know what verbal representations were made.

On the subject of whether or not terms of a tenancy agreement can be enforced, Section 6(3)(c) of the Act states that a term of a tenancy agreement is not enforceable if the term is not expressed in a manner that clearly communicates the rights and obligations under it. When the parties are in dispute about what was agreed-upon, then verbal terms by their nature are virtually impossible for a third party to interpret for the purpose of resolving a dispute that has arisen. In any case, I find that the written tenancy agreement must prevail.

While there is no doubt that some conditions arose that had an adverse impact on the tenant and that these may have devalued the tenancy, it was the tenant's choice to deal with the situation by ending the tenancy prematurely. Even when issues such as those described crop up during the course of a tenancy they do not automatically justify the ending of a tenancy by one party and do not serve to release a tenant from all financial

liability that flows from ending the tenancy before the agreed-upon date. I find that the loss of rent claim has met element 2 of the test for damages.

In assessing whether the landlord met the fourth element of the test for damages by reasonably mitigating the losses, I find that the landlord did make some effort to re-rent the residence and I accept the landlord's testimony that the premises were advertised and shown to prospective renters. However, based on the evidence and testimony, I find that the landlord likely could have sought new tenants prior to November 30, 2008.

Although the landlord felt that it was essential to have the termination notice in writing and signed, the fact is that by November 5, 2008, the landlord had communicated with the tenant and confirmed that the tenant was leaving. I therefore find that it is possible that the amount of damages may have been affected had the landlord acted without delay to re-rent the unit and I find that the landlord has not fully met all elements of the test for damages in regards to the loss of rent. I accept that the landlord lost one month's rent in the amount of \$1,400.00, but must dismiss the claim for \$496.77.

In regards to the cost for advertising of \$149.47 and the \$89.95 cost for the locks, I find that these claims do meet all elements of the test for damages. The remainder of the landlord's claim, including travel costs and charges by the rental management company must be dismissed as not falling under the Act being that such expenditures are operational business costs that do not relate to the tenant.

Therefore I find that the landlord's total loss for which the tenant should be held accountable is set at \$1,689.42, comprised of \$1,400.00 loss of rent, \$149.47 advertising costs, \$89.95 for the locks and the \$50.00 fee to file this application. I order that the landlord retain the security deposit and interest of \$1,005.04 in partial satisfaction of the claim leaving a balance due of \$684.38.

Conclusion

Based on the testimony and evidence presented during these proceedings, I grant the landlord a monetary order under section 67 of the *Act* for \$684.38. 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.

February 2009

Date of Decision

Dispute Resolution Officer