

DECISION

Dispute Codes MNR, MNSD

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties participated in the conference call hearing.

Although the landlord named both W.M. and R.M. as respondents, the tenancy agreement shows that W.M. is the only party with whom the landlord had a contractual relationship. Accordingly the accompanying order is in favour of W.M. only.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that they entered into a one year fixed term tenancy agreement on October 1, 2009 which was set to expire on October 1, 2010. The tenants were responsible to pay \$1,100.00 per month in rent and at the start of the tenancy paid a \$550.00 security deposit. The tenants were responsible to pay for utilities, including water.

The landlord testified that at the beginning of January the tenant verbally indicated that he would be suing her and suggested that he would find another home. The tenant vacated the rental unit on January 31. The landlord testified that she did not advertise the rental unit as available in February or March because she was able to find another tenant who wanted to rent beginning in April.

The tenant testified that when he told the landlord he would be suing her, she told him to get out. The tenant vacated the rental unit because the landlord had instructed him to do so.

The landlord seeks loss of revenue for the months of February and March, recovery of a fee she paid for legal advice and utility costs. Originally the landlord had made a claim for unpaid utilities for October – December, but at the hearing the parties agreed that the tenant paid utilities in full for that period. The parties agreed that the tenant had not paid utilities for the month of January. Utilities are billed for 3 month periods and in her application the landlord had sought \$37.28, which was 1/3 of the cost of utilities for the 3 month period from October – December. The landlord testified that shortly before the hearing she received a copy of the utility statement for that period which was slightly higher than the cost of utilities for the previous billing period, but stated that she was satisfied with claiming what she had estimated.

Analysis

In order to establish her claim for loss of income for February and March, the landlord must not only prove that the tenant ended the fixed term tenancy prior to the end of the fixed term, but that she made reasonable efforts to minimize her losses. I accept that the tenant ended the tenancy prior to the end of the fixed term, but I am unable to find that the landlord made reasonable efforts to re-rent the unit for the months of February and March. The landlord's testimony was clear, that she found a tenant who was willing to rent the unit beginning in April and that she made no attempt whatsoever to secure a tenant for the intervening months or an alternate tenant who could rent the unit earlier than April. I find that the landlord failed to minimize her losses as she is obligated to do under section 7(2). For this reason I dismiss the landlord's claim for loss of income.

Under the Act, the only litigation-related expense I am empowered to award is the cost of the filing fee paid to bring an application. The landlord did not request recovery of the filing fee but asked to be reimbursed the \$44.80 cost of her consultation with her lawyer. I must dismiss this claim as I am not empowered to make such an award.

I find the \$37.28 claimed for utilities for January to be reasonable and I award the landlord that sum.

Residential Tenancy Policy Guideline #17-2 provides as follows:

The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit

unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

I find that the tenant has not extinguished his right to the return of the deposit. The landlord has been awarded \$37.28 which I order her to retain from the \$550.00 security deposit. In the spirit of administrative efficiency and pursuant to the terms of the Residential Tenancy Policy Guidelines, I order that the landlord forthwith return to the tenant the balance of the security deposit, which is \$512.72. I grant the tenant a monetary order under section 67 for \$512.72. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is awarded \$37.28. The tenant is granted a monetary order for \$512.72 which represents the balance of the security deposit.

Dated: May 10, 2010
