



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

Decision

Dispute Codes:

MNDC Money Owed or Compensation for Damage or Loss

Introduction

This Dispute Resolution hearing was convened to deal with an Application by the landlord for a monetary order for money owed or compensation for damage or loss under the Residential Tenancy Act, (the Act), and an order to retain the security deposit in partial satisfaction of the claim.

Despite being served by registered mail, the tenant did not appear.

Issue(s) to be Decided for the Landlord's Application

The landlord was seeking to retain the security deposit and receive a monetary order for damage to the unit and for money owed or compensation for damage and loss under the Act for a total claim of \$2,600.00.

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 whether 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 in violation of the Act or agreement
 - b) a verification of the actual losses or damage

- c) that the landlord fulfilled the obligation to do what ever was reasonable to mitigate the costs

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

Background and Evidence

The tenancy began on September 1, 2009 as a fixed term purporting to end on June 31, 2010. Rent was \$1,300.00 per month and the tenant paid a deposit of \$650.00. The landlord testified that the tenant gave notice on November 22, 2009 to move at the end of December 2009. The landlord testified that efforts were made to re-rent to mitigate the losses by advertising the vacancy and the landlord was able to re-rent the unit as of February 1, 2010. However, the landlord testified that it suffered a \$1,300.00 rent loss for January due to the vacant suite. The landlord was also claiming an additional \$1,300.00 rent loss for February 2010, because, although the tenant's suite was rented, there were other vacant units in the building that could feasibly have been rented but for the fact that the tenant's unit was added to the vacancy list due to the tenant's violation of the fixed term contract.

The landlord submitted into evidence a copy of the tenant's notice, a copy of a letter from the landlord to the tenant dated November 30, 2009 stating that the landlord would be pursuing compensation for any loss of rent, a copy of a written summary by the landlord that lists the number of vacant units in the building for each month between January and March 2010 and a copy of the tenancy agreement.

Analysis

In regards to an applicant's right to claim damages from 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 order payment in such 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, and that this happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
2. Verification of the amount required to compensate for the loss or damage.
3. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

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 tenant. 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 mitigate the damage or losses that were incurred.

In this instance I find that the tenant violated the agreement by terminating the tenancy prior to the expiry date of the fixed term. I find that the landlord did suffer a loss of rent as a result. The landlord has met elements 1 and 2 of the test for damages.

However, in order to meet element 3 of the test for damages, the landlord would need to prove that reasonable efforts were made to mitigate the loss or rent. I find that although the landlord gave testimony that the suites were advertised, insufficient evidence was submitted to confirm that this had occurred.

That being said, I accept that the landlord did take some measures to re-rent as evidenced by the fact that a new tenant was found for February 2010. Accordingly, I find that the landlord is entitled to be compensated for the loss of rent for the month of January 2010 in the amount of \$1,300.00.

Conclusion

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to monetary compensation of \$1,350.00 comprised of \$1,300.00 for loss of rent and the \$50.00 filing costs for the application.

The landlord has not applied to retain the security deposit. However, pursuant to section 72 of the Act I order that the landlord retain the security deposit of \$650.00, in partial satisfaction of the claim and issue a monetary order for \$700.00 in favour of the landlord. 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.

The remainder of the landlord's application is dismissed without leave.

August 2010

Date of Decision

Dispute Resolution Officer