



Dispute Resolution Services

Residential Tenancy Branch
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 \$2,600.00 rent owed for November 2009, loss of rent for December 2009 and January 2010, and utilities of \$224.49 for gas and \$68.31 for hydro due to the tenant's ending of the fixed term tenancy before it expired on April 15, 2010 and an order to retain the security deposit in partial satisfaction of the claim. The landlord was also claiming compensation for \$400.00 in fines levied by the strata council for violating a bylaw and \$50.00 for the cost of replacing one garage remote that was not returned.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on May 6, 2010, the tenant did not appear.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rental losses owed due to the premature ending of the tenancy agreement prior to the fixed term expiry.

Background and Evidence

The landlord submitted into evidence a written statement detailing the claim, a copy of the tenancy agreement, copies of communications between the parties, and a copy of a notice of fine from the strata council dated August 13, 2009.

The landlord testified that the tenancy began on October 15, 2008 for a fixed term ending on April 15, 2010 for rent of \$2,600.00 at which time the tenant paid a security deposit of \$1,300.00. The landlord testified that the tenant gave notice sometime in September 2009 and the landlord had attempted to engage the tenant in a discussion about his responsibility to comply with the terms of the agreement and to make arrangements to sublet the unit to minimize the loss stemming from the violation. The landlord testified that the tenant refused to cooperate, failed to pay rent for the month of November 2009 and moved out on November 15, 2009. The landlord stated that no effort was made by the landlord to find a tenant for December and the landlord chose instead to leave the unit vacant and put it up for sale. The landlord testified that the unit sold effective the end of January 2010 and the landlord incurred a loss of rent for November 2009, December 2009 and January 2010 for a total of \$7,800.00 rent. The landlord stated that the unit was sold to mitigate further losses. The tenant had defaulted on the final 6 months of the lease agreement, but the potential amount of the claim/loss had been reduced because the landlord succeeded in selling the unit.

The landlord was also claiming reimbursement of strata fines incurred due to the tenant's failure to follow bylaws prohibiting the hanging out of laundry. The landlord stated that the tenant was given a copy of the strata bylaws at the start of the tenancy and refused to comply after repeated warnings by the landlord and even after the landlord physically removed the clothesline. The landlord testified that the strata council finally issued a letter addressed to the landlord on August 13, 2009 imposing a fine of \$25.00 and stating that continued failure to remove the laundry would result in \$25.00 for the following week and \$50.00 per week thereafter. According to the landlord, this communication was shared with the tenant that very week but he refused to remove the clothesline. However,

evidently, the outside line drying of laundry continued and fines of \$400.00 were accrued and were paid by the landlord. The landlord sought reimbursement.

The landlord was also seeking \$50.00 compensation for one of the two garage door openers given to the tenant at the start of the tenancy, which the tenant had failed to return. Finally, the landlord was claiming reimbursement for the cost of filing for dispute resolution.

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 the Act, the regulations or the 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 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 reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord. I find that the landlord has fully met elements 1, 2 and 3 of the test for damages. Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I find that the tenant did not pay the rent for November when rent was due. I find that the landlord is entitled to \$2,600.00 for rent owed for November 2009.

In regards to the claim for loss of rent for December 2009 and January 2010, I find that the landlord has fully met elements 1, 2 and 3 of the test for damages. However, in regards to element 4 of the test, that is whether or not the landlord's actions in mitigating the loss were reasonable, I find that the landlord's actions in merely placing the home for sale would only qualify as a reasonable effort to mitigate the loss of rent if the landlord had also tried to advertise for a new tenant to cover the loss of rent. I find that the failure to take further reasonable steps to obtain a paying tenant may well have contributed to the quantity of the loss. In this regard, I find that the landlord has not fully met element 4 of the test for damages. Accordingly, I find that the landlord is only entitled to loss of rent for December in the amount of \$2,600.00.

In regards to the utility charges, I find that the landlord is not entitled to be reimbursed for the costs of utilities for any period beyond the termination of the tenancy and after the tenant ceased to occupy the unit.

In regards to the strata fines, I accept the landlord's verbal testimony that the tenant was made aware of the rules and warned about the bylaw infraction. I find that the landlord has submitted evidence that a fine was levied, but did not provide sufficient evidence to support the entire claim of \$400.00. I find that the landlord's documentation had verified a fine of \$25.00 with a warning of future charges. Accordingly I find that the landlord is entitled to \$25.00.

I accept the landlord's testimony in regards to the \$50.00 charges for the loss of the garage door opener.

Given the above, I find that the landlord has established a total monetary claim of \$5,375.00 comprised \$2,600.00 rent for November 2009, \$2,600.00 rent loss for December 2009, \$25.00 verified charges for fines, \$50.00 for the garage door opener and the \$100.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$1,300.00 in partial satisfaction of the claim leaving a balance due of \$3,775.00

Conclusion

I hereby grant the Landlord an order under section 67 for \$3,775.00. 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.

September 2010

Date of Decision

Dispute Resolution Officer