

Decision

Dispute Codes: MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent owed for the month of April 2010 based on a Ten-Day Notice to End Tenancy for Unpaid Rent issued and served in person on April 2, 2010. The landlord was also claiming loss of rent for the month of May 2010 and seeking to keep the security deposit

Both parties appeared and gave testimony.

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 arrears owed and whether or not the landlord is entitled to monetary compensation for loss of rent as damages

Background and Evidence

The tenancy began in November 2009 and rent was set at \$1,250.00. However the parties agreed that the tenant would pay an additional \$50.00 per month for cable services that included internet. On April 1, 2010 the tenant did not pay the rent due and a Ten Day Notice to end Tenancy for Unpaid Rent was issued dated April 2, 2010. According to the landlord, the tenant had verbally advised that she would be moving out on or before April 15, 2010 and gave the landlord verbal permission to keep the \$600.00 deposit to cover half the month's rent. According to the landlord, some of the tenant's furniture remained in the unit until April 12, 2010, which was the effective day shown on the Ten-Day Notice. The landlord was seeking compensation for the \$1,250.00 rent and \$50.00 cable/internet due and payable on April 1, 2010.

The landlord testified that as of April 2, 2010, she commenced advertising the rental unit in the hope of finding a prospective tenant and had received one serious inquiry from a couple seeking to view the unit. The landlord testified that on April 3, 2010 a written notice was given to the tenant seeking to enter the unit on April 5, 2010 for a viewing with potential renters. However, the tenant refused to cooperate. The landlord submitted into evidence a copy of an email from a third-party, not present as a witness,

that confirmed the third party had unsuccessfully attempted to view the rental unit and the couple had instead found other rental accommodation. The landlord testified that the tenant's denial of access to the landlord had directly caused a loss of rent for May 2010 in the amount of \$1,300.00 and the landlord was also seeking a monetary order for damages in this amount.

The landlord's total monetary claim was for \$3,200.00 which, in addition to the above, also included keeping the tenant's \$600.00 security deposit.

The tenant acknowledged that \$1,250.00 rent was not paid on April 1, 2010. The tenant testified that due to ongoing interference by the landlord and other serious problems with the tenancy that continued and worsened over the course of the tenancy, the tenant felt it urgently necessary to move out and obtained another rental unit in the same neighbourhood. The tenant testified that she was aware that there was a five-day window after the Notice to End Tenancy was served in which she could have paid the rent owed to cancel the Notice. According to the tenant, during this five-day period the landlord's nuisance behavior escalated and appeared to be aimed at driving the tenant to leave. The tenant testified that this conduct included: issuing immediate notification to show the unit to renters; service of a written notice to inspect the unit; illegally shutting off the tenant's hydro power, following the tenant in a vehicle and monitoring her whereabouts and entering the rental unit without notice or permission for an alleged emergency that had nothing to do with the tenant's suite in any way. The tenant referred to copies of the landlord's notices dated April 2 and 3, 2010 that were in evidence.

The tenant stated that these actions by the landlord had the effect of dissuading the tenant from paying the arrears within 5 days to cancel the Notice and save her tenancy and, in fact, influenced the tenant to vacate even earlier than the date shown on the landlord's Ten-Day Notice. The tenant testified that she frantically negotiated moving into the other rental unit early and she moved on April 6, 2010. The tenant stated that this was done at significant additional cost because continuing to live in the rental unit became intolerable. The tenant felt that by intentionally committing violations of the Act against the tenant, the landlord had engineered her own losses which should not be passed onto the tenant. The tenant also testified that, after the unit was thoroughly cleaned and the keys handed over on April 6, 2010, she was thanked by the landlord and believed that all matters between them had been finally resolved as they went their separate ways. The tenant disputed the landlord's claims for rent and loss of rent.

Analysis

With respect to the rent owed for April, 2010, I find that 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 the Act, the regulations or the tenancy agreement. In this

instance, regardless of whether the landlord had acted in violation of the Act in dealing with the tenancy, the tenant must not withhold rent. I find that the tenant did not have a legal right to withhold the \$1,250.00 rent for April which was to be paid when it was due. In addition to the above, I find that the tenant was served with a Notice to End Tenancy for Unpaid Rent. I find that the tenant did not pay the outstanding rent, nor did the tenant apply to dispute the Notice or amount of rent claimed. Accordingly I find that the tenant must compensate the landlord for April rent owed for in the amount of \$1,250.00.

With respect to the \$50.00 utility claim for April, 2010, I find that section 46(6) of the Act states that a notice based on utilities can be issued only if a tenancy agreement requires the tenant to pay utility charges to the landlord, and they remain unpaid more than 30 days after the tenant receives a written demand for payment. Only if the above conditions are met, can unpaid utility charges be considered as unpaid rent to give notice on this basis. I find this agreement indicated cable was not included in rent but failed to specify exactly how the payment was to be made for this service. In any case, I find the landlord had not provided 30-days notice to pay the cable/internet services before including these utility charges as rental arrears in the Ten-Day Notice. Accordingly the portion of the landlord's claim for the \$50.00 cable internet charges for April 2010 must be dismissed.

In regard to the \$50.00 utility charges for May's cable internet, I find that this portion of this claim must also be dismissed because the tenant was not residing in the unit during May 2010 and therefore could not have incurred any utility costs for that month.

In regard to the landlord's claims for loss of rent for May 2010, I find that an applicant's right to claim damages from another party is dealt with in section 7 of the Act which provides that if a party fails to comply with the Act or agreement, the non-complying party must compensate the other for any damage or loss that results. 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 regard to the loss of \$1,250.00 rent for May 2010, I find the tenant in violation of the Act on one occasion in not permitting the landlord to show the unit to a prospective renter early in April 2010. However, I find that the landlord has not sufficiently proven that this incident of noncompliance on the part of the tenant was the sole cause for the failure to find a new tenant for May 2010. I find that the landlord had access to the vacant suite to market the unit at will during the 4 weeks in May and the landlord failed to provide adequate proof that reasonable steps were taken to mitigate throughout this entire period. Therefore I find that the claim for loss of rent for the month of May 2010 failed to meet elements 2 and 4 of the test for damages. Accordingly I find that the landlord is not entitled to compensation for loss of rent for the month of May 2010 and this claim is dismissed.

As this was the landlord's application, not the tenant's, I make no findings in regards to the tenant's claim of being forced to relocate nor claim of loss of value to the tenancy due to the landlord's alleged interference and contravention of sections 27, 28, 29 and 32 of the Act. The tenant is at liberty to make her own dispute application to seek compensation for the loss of value to the tenancy if she decides to pursue the matter.

Given the above, I find that the landlord has established a total monetary claim of \$1,275.00.00 comprised of rent owed for April of \$1,250.00 and a portion of the fee paid by the landlord for this application in the amount of \$25.00. I order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim leaving a balance due of \$625.00.

Conclusion

I hereby grant the Landlord an order under section 67 for \$625.00. 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. The remainder of the landlord's application is dismissed without leave.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: December 2010.

Dispute Resolution Officer