

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for rent owed, loss of rent and other damages as well as an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared and gave testimony during the conference call.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether or not the landlord is entitled to monetary compensation for unpaid rent, loss of rent and damages.

Background and Evidence

Evidence was submitted by both the landlord and the tenant. Only the evidence verified as served on the other party was reviewed.

The landlord testified that the fixed term tenancy began in August 2008 with rent at \$1,575.00 and a security deposit of \$700.00 was paid. The fixed term was to expire on August 31, 2009. According to the landlord, the tenant suddenly vacated at the end of January without giving one month written notice as required under the Act and when the landlord checked into the tenant's rental account balance, it was discovered that that the tenant had stopped the automatic deposit for her rent payments starting in October 2008. The landlord testified that the tenant was four months in arrears for rent at the time she vacated leaving an accrued debt of \$6,300.00. The landlord testified that because no notice was given, he suffered a loss of rent for the month of February 2009 in the amount of \$1,575.00, but managed to re-rent the unit for the 6 months remaining on the fixed term. The landlord stated that due to the economy and the responsibility of mitigating his losses, he was forced to accept a lower rental rate of \$1,285.00 per month and suffered a further loss of \$1,740.00 over six months. The landlord's Claim was for a total of \$9,615.00 in rent. The landlord was also claiming compensation for the

\$100.00 cost of filing the application, \$131.25 for the process serving investigation as well as additional costs for cleaning and re-rental.

The tenant stated that the landlord had failed to live up to the tenancy agreement and had misrepresented the nature of the suite. The tenant stated that she made repeated complaints to the landlord about concerns that arose during the tenancy but nothing was rectified.

The tenant admitted that rent was not paid for October 2008, November 2008, December 2008 and January 2009, but explained that there was a verbal agreement with the landlord to waive the rent because of the serious problems with the rental unit and the landlord's violations of the Act during the tenancy. The tenant stated that problems were evident immediately after she had moved in but acknowledged that she did not file for dispute resolution seeking a remedy for any of the violations. The tenant stated that it was an "illegal suite". Also the tenant testified that, since she was rarely home, the landlord had allowed her to keep her belongings in the suite rent-free until she managed to find another suitable place to live. In addition, according to the tenant, the landlord's motivation for allowing her to remain in the rental suite without paying stemmed from the fact that the tenant had threatened to charge him with sexual harassment.

The tenant did not agree with the landlord's claim for compensation for the four month's rent nor the loss of rent for February 2009. The tenant pointed out that the fact that the landlord failed to act to end the tenancy for unpaid rent during the final four months of her occupancy clearly supported her allegation that there was a mutual agreement between them to waive the rent. The tenant did not dispute that she vacated the unit without giving written notice, but stated that the landlord was aware she was leaving for quite some time. The tenant disagreed with the claim for the 6 months reduction in rent on the basis that the landlord had not proven this was necessary and had not submitted any evidence that he had taken reasonable steps to mitigate the losses. The tenant also challenged the other claims for costs associated with re-renting and this hearing.

Analysis

Based on the testimony of the landlord, I find that the tenant did not pay rent for October 2008, November 2008, December 2008 and January 2009. Section 26 of the Act states that rent must be paid in full on the day it is due and so does the written tenancy agreement. I find that the tenant's allegation that the parties entered into a verbal agreement that altered this arrangement was not sufficiently supported by evidence.

Accordingly, I find that the landlord is entitled to be compensated in the amount of \$6,300.00 for unpaid rent from October 2008 to January 2009.

In respect to the landlord's claims for loss of rent, 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. 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

The burden of proof is on the claimant, that being the landlord to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred

I find that under section 45 of the Act, for a tenant's Notice to be valid, it must be in writing and specify the effective date that the tenant will be vacating. In this instance I find that the tenant did not end the tenancy in compliance with the Act because, based on the tenant's own testimony, only verbal notice was given. Accordingly, I find that the landlord is entitled to the resulting damages of \$1,575.00 loss of rent for the month of February 2009.

In respect of the loss of rent of \$290.00 per month suffered by the landlord for the final 6 months of the tenancy term, this was allegedly due to being forced to lower the rent in order to re-rent without further delay. I find that the burden of proof is on the landlord to show that this was a justified measure to mitigate the loss, which is a requirement under section 7(2) of the Act. I find that the landlord's verbal testimony that he took this step after two weeks of low response from prospective renters, would have been supported better with some kind of evidentiary material. However it is clear that the loss would not

have occurred had the tenant not terminated the tenancy prior to the expiry of the lease. I find that the landlord is therefore entitled to a portion of the loss representing 3 months at \$290.00 each month for a total of \$870.00.

In regard to the other claims for compensation I find the landlord entitled to the \$100.00 cost of filing the application and the \$131.25 for the cost of tracking services. However, I dismiss the landlord's claim for cleaning and re-rental costs as not sufficiently proven.

Based on the above facts I find that the landlord has established a total monetary claim of \$8,976.25 comprised of \$6,300.00 rental arrears, \$2,445.00 total loss of rent, \$131.25 for tracking services and the \$100.00 fee paid by the landlord for this application. I order that the landlord retain the security deposit of \$704.39 in partial satisfaction of the claim leaving a balance due of \$8,271.86.

The landlord is permitted to serve the tenant at the service address provided by the tenant at the hearing, which is ordered to be considered adequate service if sent by registered mail to the tenant at that employment address.

Conclusion

I hereby grant the Landlord an order under section 67 for \$8,271.86. 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.

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