



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent and loss of rent for the months of October 2010 through April 2011. The tenant did not appear at the hearing. The landlord provided a registered mail receipt and tracking information showing the tenant received the landlord's registered mail on April 1, 2011. The tenant had also provided a written submission in response to the landlord's claims which the landlord confirmed receiving. I was satisfied the tenant had been sufficiently notified of the landlord's application and I proceeded to hear from the landlord without the tenant present.

I have considered the landlord's and tenant's written submissions and documentation in reaching this decision.

Issue(s) to be Decided

Has the landlord established an entitlement to a Monetary Order for unpaid rent and loss of rent for the months of October 2010 through April 2011?

Background and Evidence

The rental unit is a bedroom, with ensuite bathroom, located in a townhouse and includes shared access to the kitchen. The rental unit was referred to as room no. 1 by the parties. The landlord rented out up to four other rooms in the townhouse.

The landlord and tenant executed a written tenancy agreement and a "Residential Tenancy Agreement Addendum" on April 9, 2010 for an 11 month fixed term tenancy set to commence September 1, 2010. A security deposit of \$350.00 was required and the monthly rent was set at \$700.00. The tenant provided the landlord with post-dated rent cheques; however, the September 1, 2010 cheque was returned for insufficient funds.

The landlord and tenant met on September 6, 2010 at which time the tenant gave the landlord \$747.00 and the landlord provided the tenant a receipt for the \$747.00 which states:

“Received \$747 as part of liquidated damage per NSF check and default of 4061 Larchwood rental. Additional charge may be required by the Claire Q if further loss occurred.”

[reproduced as written].

The landlord did not return the remainder of the post-dated cheques and deposited the post-dated cheques for October 2010 through January 2011; however, the cheques were not honoured.

In October 2010 the tenant filed an application for dispute resolution seeking return of her security deposit and on February 15, 2011 a Dispute Resolution Officer heard the matter and awarded the tenant return of double the security deposit, plus the filing fee, for a total award of \$750.00 (file no. 244119). The landlord was also ordered to return the tenant's post-dated cheques. The landlord subsequently filed this application to obtain compensation of \$4,900.00 representing unpaid rent and loss of rent for the months of October 2010 through April 2011.

In October 2010 the municipality inspected the residential property and ordered the landlord to cease using room no. 4 as a bedroom. The landlord testified that the tenant of room no. 4 was provided a key to the rental unit but claimed the tenant of room no. 4 did not stay in room no. 1. Rather, the tenant of room no. 5 began occupying room no. 1 without authorization starting at the end of September 2010 or beginning of October 2010.

The landlord testified that the tenant of room no. 4 was not sleeping in room no. 1 and was sleeping elsewhere even though the landlord was still collecting rent from her. However, in the tenant's submissions, the tenant of room no. 5 states that she and the tenant of room no. 4 agreed to switch rooms so that the tenant of room no. 4 was using room no. 5 and the tenant of room no. 5 was using room no. 1.

The landlord testified that the tenant of room no. 5 ceased occupying room no. 1 in February 2011. The landlord explained that he was unaware of the unauthorized use of room no. 1 until February 2011 because he was overseas.

The landlord testified that advertising of room no. 1 was done using websites; however, no suitable tenant was found. The landlord testified that he had an agent handling the responses to prospective tenants while he was overseas. There had been no showings to prospective tenants as of the date of this hearing and the landlord requested the application be amended to include loss of rent up to July 2011.

The landlord explained that had a new tenant been secured for room no. 1 the landlord would have negotiated an end of tenancy with the tenant of room no. 4 as that tenant was only paying \$450.00 per month.

In support of the landlord's claims, the landlord provided the following documentation: copies of the dishonoured rent cheques for September 2010 through January 2011; the Residential Tenancy Agreement Addendum signed April 9, 2010; and, a copy of the receipt for \$747.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon consideration of all of the evidence before me, I am satisfied the tenant violated the tenancy agreement and the Act by way of failing to pay rent when due on September 1, 2010. Rather than issue the tenant a 10 Day Notice to End Tenancy for Unpaid Rent, as is the remedy for landlord's who do not receive rent, the parties agreed to terminate the tenancy. Upon reading the receipt, I am satisfied the landlord did put the tenant on notice that he may hold the tenancy responsible for additional losses. Therefore, I have considered the landlord's claims for loss of rent for October 2010 onwards.

I find the landlord did not provide sufficient evidence to satisfy me that reasonable efforts were made to minimize the landlord's losses for the months of October 2010 onwards, based upon the following factors:

- The landlord did not provide any evidence to substantiate when advertising efforts commenced and ended; or, the content of the advertisements;
- There were no showings of the rental unit to prospective tenants from September 2010 – July 2011; and,
- The tenant of room no. 4 was given the authority and the ability to use the rental unit since room no. 4 could not be used as a bedroom starting October 2010.

I find it inconsequential that the tenant of room no. 4 did not actually use and occupy room no. 1. The landlord gave the tenant of room no. 4 the authority and the ability, by giving her the key, to occupy room no. 1. That tenant's agreement with another tenant to switch rooms has the same effect as if tenant of room no. 4 occupied the room herself. Therefore, it remains that the rental unit was in use by another tenant of the landlord starting October 2010.

The tenant paid the landlord \$747.00 on September 6, 2010 and I find this sufficiently compensates the landlord's loss due to the tenant's violation of the tenancy agreement.

In light of the above, I dismiss the landlord's application in its entirety.

Conclusion

The landlord's application has been dismissed.

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: August 03, 2011.

Residential Tenancy Branch