



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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 loss of rent due to the tenant's failure to fulfill the fixed-term tenancy contract and other damages.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on April 28, 2011, neither co-tenant appeared.

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 loss of rent, and other damages.

Background and Evidence

The tenancy began on June 28, 2010 for a fixed term ending on June 30, 2011. The rent was \$775.00 and a security deposit of \$387.50 was paid. Submitted into evidence was a copy of the tenancy agreement, a copy of the tenant ledger, a copy of the journey log of the landlord's property assistant, proof of payment, a copy of the tenant's credit report indicating the current address and a copy of the advertisement placed on February 28 showing the unit available for \$735.00 per month.

The landlord testified that the tenant failed to pay rent on February 1, 2011 and vacated without notice on or around February 11, 2011. The landlord testified that the unit was advertised at \$735.00 per month and a new tenant moved in on April 1, 2011. The landlord is claiming \$750.00 rent owed for February, \$750.00 loss of rent for March and loss of rent of \$120.00 based on \$40.00 per month reduced rent for April, May and June 2011.

The landlord testified that a "tenant placement" fee was paid to obtain a replacement tenant and is claiming a pro-rated amount of \$131.54, pursuant to a specific term in the tenancy agreement.

The landlord stated that the tenant left a sofa on the premises after vacating, that had to be removed by the landlord and his handyman for which the landlord is claiming \$134.40 in compensation. The landlord was also claiming the costs of registered mail and other expenditures for a total of \$2,100.00.

Analysis

In regard 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.

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

Based on the testimony and evidence of the landlord, I find that the tenant violated section 26 of the Act by not paying the rent for February when it was due and also violated the fixed-term tenancy agreement by terminating it prior to the expiry date. I find that the landlord is entitled to \$1,500.00 for rent and loss of rent.

With respect to the landlord's claim for the \$120.00 loss due to the reduction of the rental rate, I find that the landlord advertised the unit February 28 at a reduced rate of \$735.00 and did not make a reasonable attempt to recoup the original \$775.00 per month rent that had been charged under the previous tenancy agreement. I find that this portion of the landlord's claim therefore failed to satisfy element 4 of the test for damages and must be dismissed.

With respect to the landlord's claim for \$131.54 prorated tenant placement fee, I find that the tenancy agreement already included another liquidated damages clause, in addition to the term now being relied on by the landlord. The Act does allow a liquidated

damage clause so long as it is based on an accurate estimate of the costs for re-renting the unit and not a penalty. I find that this second term in the agreement purporting to require reimbursement by the tenant for the landlord's costs of finding a replacement tenant, appears to be a second liquidated damages clause. Therefore this portion of the agreement is not in compliance with the Act and as such will not be enforced.

With respect to the labour and other costs claimed for the tenant's action in discarding a sofa, I find that, based on the evidentiary proof submitted by the landlord, the landlord is entitled to be compensated for two hours labour at \$16.00 per hour for each of two persons for a total of \$64.00.

Finally, I find that reimbursement for the administrative costs for preparing for the hearing, including the registered mail expenses, relate to expenditures that are not contemplated by the Act. However, I find that the landlord is entitled to be compensated for the \$50.00 cost of the application.

Given the above, I find that the landlord is entitled to \$1,614.000 comprised of \$1,500.00 for rent, \$64.00 for garbage removal and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$387.50 in partial satisfaction of the claim leaving a balance due of \$1,226.50.

Conclusion

I hereby grant the Landlord an order under section 67 for \$1,226.50. 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: August 15, 2011.

Residential Tenancy Branch