



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for monetary compensation for unpaid rent; unpaid utilities; loss of rent; and, authorization to retain the security deposit. Both parties appeared at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary matters

I determined that evidence submitted by the tenant was not served upon the landlord and I did not accept or consider it. Rather, the tenant was provided the opportunity to verbally testify as to the contents of the submission.

The tenancy agreement identifies another individual as the landlord. The person appearing as the landlord at the hearing and named as the landlord in this application is acting as the agent for the landlord. A signed statement to this effect was provided in evidence and I accept that the named landlord meets the definition of a landlord under the Act.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid rent or loss of rent from the tenant for the period of October 1, 2011 through January 27, 2012 from the tenant?
2. Has the landlord established an entitlement to recover unpaid utilities from the tenant?
3. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy commenced July 30, 2011 for a fixed term set to expire February 28, 2012. The tenant paid a \$650.00 security deposit and was required to pay rent of \$1,300.00 on the 1st day of every month. The tenant was also responsible for paying 70% of the hydro and water bills.

On September 19, 2011 the landlord issued a 1 Month Notice to End Tenancy for Cause (the Notice) with an effective date of October 31, 2011. Although the landlord did not serve the Notice in a manner that complies with section 88 the tenant acknowledged that she received the Notice; did not file an application to dispute the Notice; and, testified that she proceeded to move out of the rental unit as of September 30, 2011 because of the Notice she received.

The landlord is seeking to recover unpaid rent and loss of rent for the period October 1, 2011 up until January 27, 2012 (when a new tenancy commences) for a claim of \$4,990.32.

The landlord testified that advertising efforts commenced in early October 2011 via the internet. In response to the advertising, three sets of people asked to see the unit; two sets of people actually viewed the rental unit and of those two sets of people, one couple applied to rent the unit. The landlord accepted the tenancy application and a new tenancy agreement was entered into November 9, 2011; however, the new tenants are required to give two months of notice to move out of their co-op and would not commence the tenancy earlier than January 27, 2012.

The tenant questioned the landlord's lack of documentary evidence in support of his claims for loss of rent up until January 27, 2012. The tenant was of the position that the three-bedroom upper unit at \$1,300.00 per month should be very easy to re-rent. The tenant acknowledged that she passes by the rental unit daily as she lives just down the street and that it still appears to be vacant.

The landlord testified that he advertised the rental unit for the same amount of \$1,300.00 and re-rented it for \$1,300.00 per month. The landlord explained he had used newspaper advertising in the past but it was ineffective; thus, only online advertising was used. The landlord used four different websites to advertise the unit. The landlord suggested the lack of interest in the unit could be attributed to the time of year and because the unit is located on the outskirts of downtown.

The tenant testified that the landlord failed to meet some of his obligations under their agreement, largely to do with the use of the backyard and the operation of the stove; however, the tenant acknowledged that she did not put the landlord on written notice that he was in breach of a material term of their tenancy agreement.

In addition to the unpaid rent and loss of rent the landlord is seeking to recover \$252.76 in utilities from the tenant. The tenant did not object to this claim and acknowledged she likely owes this amount.

Documentary evidence provided by the landlord included copies of the tenancy agreement; the 1 Month Notice to End Tenancy; caution notices to the tenant; and, utility bills

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. Verification of the value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Upon review of the evidence before me I provide the following findings and reasons with respect to the landlord's claims against the tenant.

I find that by moving out of the rental unit September 30, 2011 and bringing the tenancy to an end that date the tenant violated the requirements of the Act and the tenancy agreement. If the tenant accepted service of the 1 Month Notice she was obligated to pay rent for October 2011 based upon the effective date of the Notice. If the tenant was of the position she was not served with the 1 Month Notice then the tenancy would have continued and the tenant's obligation to pay rent would have continued under the terms of the tenancy agreement. If the tenant wanted to end the fixed term tenancy due to a breach of a material term by the landlord, as she alleged, the tenant was obligated

under section 45 of the Act to put the landlord on written notice and give the landlord a reasonable amount of time to correct the breach before she could have ended the tenancy. The tenant did not put the landlord on written notice of a breach and was not in a position to end the tenancy under section 45.

I am satisfied the landlord suffered a loss of rent due to the tenant ending the tenancy earlier than permitted under the Act or tenancy agreement. However, as pointed out by the tenant, I also have concerns about the lack of documentary evidence showing the advertising efforts and the commencement date of the new tenancy agreement.

Where a rental unit is vacant for several months the issue of mitigation is paramount, as provided in part 4. of the test outlined above. The landlord did not provide any documentary evidence to demonstrate when advertising commenced, the frequency of advertisements, the content of the advertisements, or the amount advertised as the rental rate at which times. Although the landlord provided this information verbally during the hearing, where a landlord is claiming several months of loss of rent, I find it reasonable to expect that the landlord would provide copies of at least some of the advertisements, receipts for advertising costs or a schedule as to timing and placement of various advertisements and at what rental rate; and, in this case, a copy of the new tenancy agreement entered into after this tenancy ended.

Given the lack of documentary evidence that would have been available to the landlord I find I am not satisfied that the landlord has demonstrated that sufficient efforts were made to minimize rental losses. Therefore, I limit the landlord's claim for loss of rent to the equivalent of the rent payable for October 2011.

Upon review of the tenancy agreement I am satisfied the tenant was obligated to pay a portion of the utility costs and the landlord has provided documentary evidence in support of a portion of the amount claimed. Since the tenant did not dispute the amount claimed, I award the landlord the \$252.76 as claimed.

I further award the landlord one half of the filing fee paid for this application. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord and I provide the landlord with a Monetary Order calculated as follows:

Loss of rent – October 2011	\$ 1,300.00
Unpaid utilities	252.76
Filing fee	<u>25.00</u>
Sub-total	\$ 1,577.76
Less: security deposit	<u>(650.00)</u>
Monetary Order	\$ 927.76

The landlord must serve the Monetary Order upon the tenant and may enforce it in Provincial Court (Small Claims) as an Order of the court.

Conclusion

The landlord was partially successful in this application and has been authorized to retain the tenant's security deposit and was provided a Monetary Order for the balance of \$927.76 to serve upon the tenant.

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 30, 2011.

Residential Tenancy Branch