



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the Landlord for an order for monetary damages arising from the Tenant breaking a fixed term lease early, including unpaid rent, an NSF charge, liquidated damages, a request to keep the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

An Agent for the Landlord appeared, gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified that the Tenant had been served with the Notice of Hearing and Application by registered mail, sent on September 21, 2011. Under the Act registered mail is deemed served five days later. The Agent testified he checked the tracking for the mail and it indicates that the Tenant accepted the mail on September 28, 2011. Despite this, the Tenant did not appear at the hearing. I find the Tenant has been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues(s) to be Decided

Did the Tenant breach the term lease, entitling the Landlord to monetary compensation?

Background and Evidence

On or about August 7, 2011, the Tenant signed an application to rent the subject rental unit and then signed the tenancy agreement. The term of the agreement was for one year, and the monthly rent was \$725.00. The Tenant paid the Landlord a security deposit of \$362.50. The tenancy agreement contains a clause that provides the Tenant will pay the Landlord liquidated damages of \$500.00 if the Tenant breaches the lease

before the end of one year. The agreement also contains a clause that late payment of rent or returned cheques (NSF) requires the Tenant to pay the Landlord a fee of \$25.00.

On or about September 1, 2011, the Tenant gave the Landlord verbal notice he would not be moving into the rental unit. On or about September 15, 2011, the Landlord received a written note from the Tenant explaining he would not be moving in to the rental unit due to a personal injury.

The cheque the Tenant gave to the Landlord for September rent was returned NSF.

The Landlord re-rented the unit on November 1, 2011.

The Landlord is claiming for \$725.00 for rent for September of 2011, \$500.00 for the liquidated damages clause, \$25.00 for the NSF cheque and \$50.00 for the filing fee for the Application. The Landlord also requests to keep the security deposit in partial satisfaction of the claim.

Analysis

Based on the above, the uncontradicted testimony and evidence, and on a balance of probabilities, I find that the Tenant breached the Act and tenancy agreement by ending the tenancy contrary to the Act and tenancy agreement.

Under section 45 of the Act, the Tenant is not allowed to end a fixed term tenancy prior to the end of the term. If the Landlord had breached a material term of the tenancy agreement and the Tenant requested in writing that the Landlord correct the situation within a reasonable time, and it was not corrected by the Landlord, then the Tenant could have ended the term tenancy under section 45(3) of the Act. However, there is no evidence from the Tenant in this case that would support any claim that the Landlord breached a material term of the tenancy agreement.

Therefore, I find the Tenant breached the Act and tenancy agreement by unlawfully ending the tenancy.

The Landlord mitigated the loss, as required by the Act, and had new tenants move into the rental unit on November 1, 2011.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find the breaches by the Tenant have caused the Landlord to suffer a loss.

I find the Landlord is entitled to one month of lost rent due to the Tenant's breach. I also find that the Tenant must pay the liquidated damages. I find it is a genuine pre-estimate of the costs to the Landlord to re-rent the unit, and is not a penalty.

Furthermore, I find that the Tenant shall pay \$25.00 for the NSF fee and \$50.00 for the application fee for the filing of this claim.

Therefore, I find that the Landlord has established a total monetary claim of **\$1,300.00**, comprised of \$725.00 for one month rent, \$500.00 for liquidated damages, \$25.00 for an NSF charge and the \$50.00 fee paid by the Landlord for this application.

I allow the Landlord to retain the security deposit of \$362.50 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$937.50**. This order must be served on the Tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court

Conclusion

The Tenant breached the Act and tenancy agreement by unlawfully ending a one year fixed term tenancy agreement. The Landlord is entitled to rent, liquidated damages, an NSF fee, and the cost of filing the Application.

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 06, 2011.

Residential Tenancy Branch