



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNSD FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for the cost of carpet cleaning, \$24.00 rent owed for June 2011, loss of rent for a partial month in July 2011 and liquidated damages due to the tenant failing to fulfill the fixed-term tenancy.

Although served with the Application for Dispute Resolution and Notice of Hearing in sent by registered mail on September 30, 2011 to the forwarding address supplied by the tenant, the tenant did not appear. The landlord supplied proof of the registered mailing and I accept that the tenant was validly served in accordance with the Act.

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 rent and damages.

Background and Evidence

Submitted into evidence was a copy of the tenancy agreement, a copy of a ten-day Notice to End Tenancy for Unpaid Rent, a copy of the tenant's ledger, a copy of the move-in and move-out condition inspection reports signed by the tenant and a copy of the invoice for the carpet cleaning.

The landlord testified that the one-year fixed-term tenancy began on December 1, 2010 and the current rent was \$850.00. A security deposit of \$425.00 was paid. The landlord testified that on June 30, 2011, the tenant ended the tenancy and supplied a written forwarding address. The landlord testified that the tenant was in arrears for rent for June 2011, but subsequently paid all but \$24.00 of the arrears, which are still outstanding. The landlord testified that on July 22, 2011, the unit was re-rented and the landlord is claiming \$592.00 loss of rent for a portion of July. The landlord is also claiming liquidated damages in the amount of \$350.00 pursuant to a term in the tenancy agreement and the cost of carpet cleaning, which was also a requirement in the tenancy agreement.

With respect to the fact that the landlord did not return the security deposit not make his application within 15 days, the landlord pointed out that, on the move-out condition inspection report, the tenant had indicated that the security deposit could be retained by the landlord, and that the tenant agreed to pay any additional amounts that exceeded the security deposit.

Analysis

In regard to the rent being claimed by the landlord, I find that section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I accept that the tenant did not pay the rent when it was due and that the landlord is entitled to \$24.00 rental arrears still owed for the month of June 2011.

In regard to the claim for loss of rent, I find that 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 the damage or losses that result. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant, pursuant to section 7.

Based on the testimony and evidence of the landlord, I find that the tenant violated the fixed-term tenancy by terminating it prior to the expiry date. I find that the landlord incurred a partial loss of rent for the month of July 2011 in the amount of \$592.00.

With respect to the claim for liquidated damages, section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement. And section 58 of the Act also states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis).

In this instance I find that there was a clear term in the tenancy agreement that required payment of \$350.00, should the tenant terminate the contract prematurely. Accordingly, I find that the landlord is entitled to monetary compensation of \$350.00.

I find that section 37 of the Act required that the tenant leave the unit in reasonably clean condition and there was also a specific term in the tenancy agreement with respect to the tenant's obligation to clean the carpet at the end of the tenancy. The

landlord submitted an invoice for \$123.20 for carpet cleaning and I find that the landlord is entitled to this amount.

Given the above, I find that the landlord is entitled to a monetary award of \$1,139.20 comprised of rental arrears of \$1,089.20 and the \$50.00 fee paid by the landlord for this application.

I order that the landlord retain the security deposit of \$425.00 in partial satisfaction of the claim leaving a balance due of \$714.20.

Conclusion

I hereby grant the Landlord an order under section 67 for \$714.20. 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 13, 2011.

Residential Tenancy Branch