



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: OPR, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed, loss of rent, compensation for damages and an order to keep the security deposit.

Both parties appeared at the hearing and gave evidence.

At the outset of the hearing, the parties advised that the tenancy ended on March 31, 2012. Therefore, no Order of Possession was required.

Issue(s) to be Decided

The issue to be determined, based on the evidence, is whether the landlord is entitled to compensation under section 67 of the *Act* for rent, damages or loss of rent.

Background and Evidence

The landlord testified that the fixed term tenancy began in on May 1, 2011 and was to run for 2 years. The rent was set at \$1,650.00 due on the 1st of each month and a security deposit of \$825.00 and pet damage deposit of \$300.00 was paid. A copy of the tenancy agreement, copies of communications, copies of advertisements and copies of invoices were in evidence.

The landlord testified that on February 29, 2012 the tenant's gave written Notice to terminate the agreement prematurely which was effective April 1, 2012. The landlord testified that she immediately listed the rental unit for rent and even reduced the monthly rental rate to find a tenant as quickly as possible. The landlord testified that numerous people viewed the unit during March. The landlord testified that the tenants failed to pay rent for the month of March and on March 19, 2012 a Ten Day Notice to End Tenancy for Unpaid Rent was issued. The landlord testified that when on March 27, 2012, the tenants still had not paid rent and the landlord made an application for dispute resolution.

The landlord testified that the tenant moved out on March 3, 2012 still owing \$1,650.00 rent for March 2012, which is being claimed.

The landlord testified that she was not able to find suitable tenants to re-rent the unit for April 1, 2012, despite advertising it and she incurred a loss of \$1,650.00 for the month of April 2012 which is also being claimed.

The landlord also claimed that the unit was not left in a clean condition in good repair.

The tenant acknowledged that rent for March was not paid. However, the tenant did not agree with the landlord's claim for loss of rent for the month of April. The tenant testified that given that the landlord advertised the unit and both the tenants and the landlord showed it to prospective tenants, several of whom were keenly interested, the fact it was not rented is suspect. According to the tenant, it is clear that the landlord could have found a suitable tenant willing to rent the unit on April 1, 2012 instead of for May.

The tenant testified that the landlord did not make sufficient effort to mitigate her loss and, in fact, declined to show the unit during the second half of March and in April.

The tenant also alleged that the landlord agreed to convert the tenancy from a fixed term to a month-to-month, and the tenant made reference to an email message from the landlord stating this. The landlord denied that the statement contained in the email shown in the tenant's evidence was ever composed or sent by the landlord.

Analysis

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 find that the tenant failed to pay the rent for March 2012 and the landlord is entitled to be compensated \$1,650.00.

Section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. 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. 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 Respondent's 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

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In the case before me, I find that the tenant did violate the agreement by ending the tenancy before the expiry date, that the landlord did incur a loss of \$1,650.00 as a result. I further find that the landlord did make a reasonable effort to find a replacement tenant by advertising and showing the unit, lowering the existing rental rate and finally securing a suitable tenant for May 1, 2012.

Given the above, I find that the landlord is entitled to be compensated \$3,350.00 in compensation for the rent and loss of revenue, comprised of \$1,650.00 rental arrears for March 2012, \$1,650.00 loss of rent for April and the \$50.00 cost of this application. I order that the landlord retain the \$1,125.00 being held as security and pet damage deposits in partial satisfaction of the claim leaving a remainder of \$2,225.00 still outstanding and owed to the landlord.

Conclusion

Based on the testimony and evidence presented during these proceedings, I hereby grant the landlord a monetary order under section 67 of the Act for \$2,225.00. 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: April 17, 2012.

Residential Tenancy Branch