



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") for a monetary order for unpaid rent and to recover the filing fee for the application.

The tenant was represented by her son, due to the tenant's physical incapacity.

The parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in documentary form prior to the hearing, and to make submissions to me.

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.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and to recover the filing fee?

Background and Evidence

This month to month tenancy began on July 1, 2008, ended on or about March 31, 2012, when the tenant vacated the rental unit, monthly rent was \$1244.00 and the tenant paid a security deposit of \$600.00 at the beginning of the tenancy.

The landlord submitted no evidence. I therefore relied on the testimony of the parties.

The landlord's monetary claim was \$1244.00, for alleged loss of revenue for April 2012 and \$50.00 for recovery of the filing fee.

The landlord stated that he received a call from the tenant's son on or about March 27, 2012, informing the landlord that the tenant was vacating the rental unit at the end of March 2012.

The landlord stated that due to the insufficient notice provided by the tenant, the landlord sustained a loss of revenue for April 2012.

The landlord stated he was able to re-rent the rental unit for mid April, and therefore has changed his request to retain the security deposit of \$600.00 in satisfaction of his monetary claim.

When questioned, the landlord stated that he advertised the rental unit on a popular online website as well as the company's website; however, most potential tenants were not interested in renting for the first of April, due to the short time frame.

The tenant's son submitted that the tenant was forced to vacate the rental unit due to the tenant's rapidly declining health, as his mother was suffering from terminal cancer and was not lucid most of the time.

The tenant's son stated that he gave verbal notice to the landlord of at least a week and a half that his mother was leaving the rental unit, due to her health, and the landlord stated that he would not seek the following month's rent.

Analysis

Based on the testimony, evidence, and a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, based on a balance of probabilities.

First, proof that the damage or loss exists, second, that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement, third, to establish the actual amount required to compensate for the claimed loss or to repair the damage, and last proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45 (1) of the Residential Tenancy Act requires a tenant to give written notice to end the tenancy that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

There is no dispute that the notice to vacate provided by the tenant was in verbal form and did not occur until sometime in late March 2012. There was also no dispute that the tenant paid \$600.00 as a security deposit.

Therefore I find that the tenant submitted insufficient notice to end the tenancy by not giving one clear month's notice and is liable to the landlord for rent for the following month of April 2012.

I concluded that the landlord took reasonable steps to mitigate the loss by immediately advertising the rental unit back for rent, as shown by having the rental unit re-rented within a half of a month.

I therefore find that the landlord is entitled to a loss of revenue for the first half of April 2012, and find that, at his request, he is entitled to retain the tenant's security deposit and interest of \$604.52 in full satisfaction of his monetary claim.

At the landlord's request, I do not additionally award the landlord recovery of the filing fee.

Conclusion

I order that the landlord retain the tenant's security deposit and interest of \$604.52 in satisfaction of his monetary claim.

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: June 12, 2012.

Residential Tenancy Branch