



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 Dispute Resolution hearing was set to deal with an Application by the landlord to keep the tenant's security deposit in compensation for loss of rent incurred due to short Notice to end tenancy given by the tenant .

Both parties appeared and gave testimony.

Issue(s) to be Decided

The issue is whether or not the landlord is entitled to monetary compensation under section 67 of the *Act* for a loss caused by the tenant's violation of the *Act* or agreement.

Background and Evidence

The landlord testified that the tenancy began on February 1, 2011 with rent of \$575.00 and a security deposit of \$287.50 was paid. No copy of the tenancy agreement was in evidence.

The landlord testified that on March 8, 2012 the tenant gave written Notice to vacate the unit effective March 31, 2012. A copy of the written Notice to vacate was in evidence. The landlord testified that the short Notice give by the tenant was in violation of the *Act*.

The landlord testified that the tenant also sent a communication to the landlord dated March 12, 2012 with a hand-written message stating, "*Please feel free to use your key to enter my apartment when you are interviewing potential tenants.*" A copy of this communication was in evidence.

The landlord testified that the landlord then began advertising the unit on March 18, 2012, ten days after the tenant gave Notice. According to the landlord, the ads were placed on Craigslist and remained there. The landlord stated that showings were restricted to a window of time on the weekends, as is the normal practice of this landlord in the past. No copies of the alleged advertisements were in evidence.

The landlord testified that the delay in starting the advertising was due to information from the tenant that she had the names of potential renters who were interested in the unit. The landlord testified that he followed up the two names that he was given but they did not work out.

The landlord testified that on March 25, 2012 a new tenant was found from the advertisement placed by the landlord. However, the new tenant did not move in until mid April 2012 and the landlord therefore lost a half a month's rent, and the landlord is now seeking compensation for this by keeping the \$287.50 security deposit.

The tenant acknowledged that she did give late Notice to end the tenancy. However the tenant disputed the landlord's other testimony. The tenant stated that the landlord failed to take reasonable steps to mitigate its losses. The tenant testified that, after she gave her written Notice on March 8, 2012, it became evident that the landlord was not making any effort to find a replacement tenant for April 1, 2012. The tenant testified that this prompted her to forward a communication to the landlord encouraging him to feel free to show the unit. The tenant testified that she placed her own ads for the unit after talking to the landlord and learning that he had difficulty in placing advertisements on-line. The tenant testified that she received a good response and gave several names to the landlord to follow-up.

The tenant testified that, during the final week of her tenancy in March, she returned home after an absence and was annoyed to discover that the landlord had entered the unit for a purpose other than showing the unit. The tenant testified that, in fact, the landlord was found to be in the process of doing significant renovations to the rental unit. The tenant testified that the landlord had disassembled part of the kitchen by removing the kitchen sink. The tenant testified that she felt that having the residence in this state would make it unlikely that a new tenant would ever agree to rent the unit and move in on the first of April. The tenant was of the opinion that the in-process renovation work would adversely impact marketing of the rental unit.

The tenant's position is that the landlord's failure to find a new tenant as of April 1, 2012, was caused primarily by the landlord's failure to take reasonable steps to mitigate; first by neglecting to advertise immediately, then by limiting showings and finally by engaging in disruptive renovations to the unit before the tenant's tenancy was even ended, during the period when showings were critical. The tenant also believed that the landlord failed to have the unit fit to be inhabited on April 1, 2012, thereby delaying occupancy until mid-month in April 2012.

The landlord acknowledged that renovations were commenced during the last week of March 2012 while the tenant was still entitled to full possession, but made for following points:

- the tenant had previously requested that the landlord make repairs to the kitchen area in the past during her tenancy.
- the tenant provided written permission for the landlord to enter the unit, in her communication dated March 12, 2012.
- the renovations were necessary to re-rent the unit because of condition issues.
- the renovation work was of short duration and did not interfere in any way with the marketing of the unit.
- the unit was fully ready to be inhabited on April 1, 2012.
- The tenant was not staying in the unit anyway, but lived elsewhere.

Analysis

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 actions or neglect of the Respondent in 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 was on 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. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally it must be proven that the claimant did everything possible to address the situation and to mitigate the damage or losses that were incurred

In regard to the claim for loss of rent, I find that the tenant did violate the Act by failing to give a full month Notice to vacate. Despite the landlord's failure to provide documentary

evidence to verify that the unit was not re-rented until April 15, 2012, I accept the landlord's verbal testimony that the landlord did incur a loss of one-half month rent.

I find that the factors outlined above function to fully satisfy elements 1, 2 and 3 of the test for damages.

However, to meet element 4 of the test for damages, I find that the landlord would need to provide proof that he complied with section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

In this instance, I find that the landlord did not provide sufficient evidence that he advertised the unit in a timely manner. Although no copies of the alleged ads were placed in evidence by the landlord, the landlord's testimony confirmed that the on-line ads were not placed until Sunday March 18, 2012.

In addition, I find that the landlord did not furnish sufficient evidence that the unit was marketed appropriately. According to the landlord's testimony, I find that the showings of the unit were apparently restricted to certain hours on the weekends. Moreover, I accept the tenant's testimony that the landlord's choice to disassemble part of the kitchen during the final week of the tenancy had, on a balance of probabilities, adversely impacted showings to potential tenants or could even have caused a delay in the available date for occupancy.

I accept the landlord's argument that repairs were needed and also accept that repairs had likely been requested earlier in the tenancy by the tenant. In any case, repairs are the responsibility of the landlord under section 32 of the Act and I find that any resulting liabilities connected with the need for repairs would not be attributed to the tenant under the Act.

I also accept the landlord's argument that the tenant had willingly granted access to the landlord to enter the unit. However, in reviewing the tenant's communication, it is clear that this access was granted specifically for the purpose of showing the unit.

With respect to the landlord's argument that the tenant was not actually residing in the unit, I accept this as a fact. However, I find this fact to be irrelevant to the issue of whether or not the landlord's conduct affected the landlord's obligation under section 7(2) of the Act to reasonably mitigate losses in a damage claim under section 7(1) of the Act.

Given the above, I find that the landlord's claim for the loss of rent has failed to meet element 4 of the test for damages because the landlord failed to submit adequate evidentiary proof that a reasonable attempt was made to minimize the potential loss.

Based on the testimony and evidence presented during these proceedings, I find that the landlord's monetary claim has no merit and must therefore be dismissed.

Conclusion

Based on the testimony and evidence I hereby dismiss the landlord's claim in its entirety without leave to reapply. As I have dismissed the landlord's monetary claims, I find that the landlord must return the tenant's security deposit forthwith in accordance with section 38 of the Act and I hereby issue a monetary order to the tenant in the amount of \$287.50. The order must be served on the landlord and may be enforced in Small Claims Court if necessary.

This decision is final and binding and 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 05, 2012.

Residential Tenancy Branch