



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes

MNSD

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent and to retain the tenant's security deposit in full satisfaction of the claim.

Both parties appeared at the hearing and gave evidence.

Issue(s) to be Decided

The issues to be determined based on the testimony and the evidence is whether or not the landlord is entitled to monetary compensation for loss of rent.

Background and Evidence

The tenancy began on April 1, 2012 and was ended by the tenant on April 29, 2012. The rent was \$1,195.00 per month and a security deposit of \$597.50 was paid.

The landlord submitted into evidence a copy of the tenancy agreement and the tenant submitted a copy of the last page of the move-in and move-out condition inspection report.

The landlord testified that the tenant failed to give one month Notice in writing that he was ending the tenancy as required under the Act. The landlord testified that only verbal notice was given by the tenant and that this occurred on April 28, 2012 to vacate effective April 29, 2012. The landlord testified that the unit was vacant for the month of May 2012 and was not re-rented until June 1, 2012. The landlord testified that they suffered a loss of \$1195.00 for the month of May 2012. However, the landlord stated that they decided to limit their claim to \$597.50 which would be covered by the security deposit paid by the tenant.

The tenant testified that the statement on the move-out condition inspection report verifies that the parties had agreed that the tenant would only forfeit \$100.00 of his deposit for cleaning costs. The tenant testified that his expectation was that the landlord would therefore be returning \$497.50 as indicated on the form he signed on

April 29, 2012. The tenant's position is that this agreement functioned to limit any future claims for compensation made by the landlord. The tenant did not agree that the landlord was entitled to keep the entire security deposit.

Analysis

Section 45 of the Act permits a tenant to end a periodic tenancy by giving the landlord written notice to end the tenancy effective on a date that (a) is not earlier than one month after the date the landlord receives the notice, and; (b) is the day before the day in the month that rent is payable under the tenancy agreement.

I find that in this instance the notice given by the tenant did not comply with the Act.

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 damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In regard to the tenant's argument that the settlement of \$100.00 for cleaning constituted an agreement that limited the landlord's future claims against the deposit, I find that condition issues with the rental unit on the final day of the tenancy are documented in the move out condition inspection report which functions to verify that the unit was left reasonably clean and undamaged, as required under section 37 of the Act.

Section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

I accept that the parties did agree that the landlord was entitled to cleaning costs of \$100.00 which could be retained from the tenant's security deposit, leaving the remainder of \$497.50 held in trust for the tenant. I find that this represented the specific costs or losses for the landlord that existed at the precise time that the tenancy ended.

However, I find that, after the final day of the inspection, the landlord later incurred further losses during the month following the tenant's noncompliant termination of the tenancy. This transpired because the unit remained vacant due to the short notice given by the tenant, and the landlord was not able to find a new tenant for May 1, 2012 thereby resulting in a loss of rent in the amount of \$1,195.00.

Section 7 of the Act permits a landlord to make a claim for compensation when tenant fails to comply with the Act. However, 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 is on the claimant, that being the landlord], to prove the existence and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to present evidence which will verify that a reasonable attempt was made to mitigate the damage or losses incurred.

Based on the above facts I find that the landlord has met all elements of the test for damages and has successfully established entitlement to the \$100.00 for cleaning costs as agreed by the parties as well as the right to retain the \$497.50 remainder of the security deposit in partial compensation for the loss of rent that was genuinely incurred due to the tenant's failure to comply with the Act in terminating his tenancy.

Conclusion

I hereby grant the Landlord entitlement to compensation under section 67 in the amount of \$597.50. I order that the landlord retain the tenant's security deposit in full satisfaction of the 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 27, 2012.

Residential Tenancy Branch