



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by an agent for the landlord and the male tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on August 8, 2011 for a 10 month fixed term tenancy beginning on September 1, 2011 for a monthly rent of \$1,200.00 due on the 1st of each month with a security deposit of \$600.00 paid.

The parties agree the tenancy ended on May 31, 2012 after the tenants had provided the landlord with notice of their intention to end the tenancy. The landlord submits they began to advertise the vacancy as soon as possible after receiving notice and that they were not able to re-rent the unit until August 1, 2012.

The landlord seeks only rent for the month of June 2012 in the amount of \$1,200.00 and does not seek any additional compensation such as liquidated damages in the amount of \$ 800.00 as provided for in the tenancy agreement or any additional costs associated with having to re-rent the unit.

The tenant submits that prior to signing the tenancy agreement they had dealt with a different agent of the landlord who had indicated that the landlord would not seek additional compensation for rent if the tenants decided to leave the rental unit earlier than the end of the fixed term. Rather, the tenant submits, the other agent indicated that the landlord would only seek the liquidated damages.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

In the case of verbal agreements, I find that where terms are clear and both the landlord and tenant agree on the interpretation, there is no reason why such terms cannot be enforced. However when the parties disagree with what was agreed-upon, the verbal terms, by their nature, are virtually impossible for a third party to interpret when trying to resolve disputes.

In this case, the landlord has provided a copy of a tenancy agreement for a fixed term tenancy that does not specify that the landlord will not pursue rent if the tenant fails to stay in the rental unit until the end of the fixed term. As such, I must accept the terms as outlined in the tenancy agreement as those terms that both parties agreed to in relation to this tenancy.

As such, I find the tenants violated Section 45(2) of the *Act* by vacating the rental unit one month prior to the end of the fixed term and as such the landlord has suffered a loss. I accept the value of that loss is the amount of rent the landlord would have collected had the tenants fulfilled their obligations under the tenancy agreement.

I accept the landlord has taken reasonable steps to attempt to mitigate the loss of rent by advertising the availability of the rental unit as early as possible. For these reasons I find the landlord is entitled to the full amount of this claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,250.00** comprised of \$1,200.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$650.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: August 20, 2012.

Residential Tenancy Branch