



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for damages to the unit, to keep all or part of the security deposit, and to recover the cost of filing fee for the tenant.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on July 13, 2012, to the tenants forwarding address which was provided by the tenants' in the move-out inspection report. Canada post tracking numbers were provided as evidence of service, the tenants did not appear.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

Preliminary Issue

At the onset of the hearing the landlord's agent stated they are no longer proceeding with the claim for damages to the unit and are withdrawing that portion of their claim.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Is the landlord entitled to retain all or part of the security deposit?
Is the landlord entitled to recover the cost of filing their application?

Background and Evidence

The parties entered into a fixed term tenancy agreement which began on August 1, 2011 and was to expire on July 31, 2012. Rent in the amount of \$1,650.00 was payable on the first of each month. A security deposit of \$825.00 was paid by the tenants.

The landlord's agent testified they received written notice from the tenants on May 30, 2012, to end the tenancy on June 30, 2012. The landlord's agent testified the tenants were notified by letter dated June 13, 2012, that they would be held responsible for rent for July 2012, should they vacate the premises prior to the expiry of the fixed term agreement. The landlord's agent stated the tenants moved-out on June 30, 2012.

The landlord's agent testified that they did not attempt to re-rent the unit as the owner had the property for sale.

Analysis

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

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the landlord has the burden of proof to prove a violation of the Act and a corresponding loss.

Section 45(2) of the Residential Tenancy Act states:

45 (2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

*(b) is **not earlier than the date specified in the tenancy agreement** as the end of the tenancy.*

In this case, the tenants provided written notice to end tenancy effective June 30, 2012. However, the earliest date the tenants could have legally ended the tenancy was July 31, 2012, as stated in the tenancy agreement. I find the tenants have breached the Act.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. However, in this case the landlord made no attempt to mitigate the loss as the property was on the market for sale. As a result, I find the landlord has failed to mitigate to minimize the loss claimed. Therefore, I dismiss the landlord claim for damages for unpaid rent for the month of July 2012.

The landlord is not entitled to retain the tenants' security deposit for unpaid rent.

As the landlord has not been successful with their claim the landlord is not entitled to recover the filing fee from the tenants.

Conclusion

The landlord's agent withdrew their claim for damages to the unit.

The landlord's application for a monetary order for unpaid rent and to retain the security deposit is dismissed.

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: September 25, 2012.

Residential Tenancy Branch