



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 hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, compensation for damages to the unit and an order to retain the security deposit in partial satisfaction.

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began approximately 3 1/2 years prior to the hearing. Rent in the amount of \$600.00 was payable on the first of each month. A security deposit of \$300.00 was paid by the tenant. The parties agreed no move-inspection report was completed.

The landlord's agent testified that the tenant did not pay any rent for June 2012, and as a result was served with a ten day notice to end tenancy. The landlord's agent stated the tenant disputed the notice to end tenancy on June 18, 2012, however, the tenant did not attend at the hearing on July 10, 2012, and the tenant's application was dismissed.

The landlord's agent testified on July 2, 2012, he attended the rental unit and it was vacant. However, the tenant still had items on the surrounding property. The landlord stated he spoke to the tenant and the tenant informed him that she still had possession of the unit until a decision was made on her application for dispute resolution.

The landlord's agent testified the tenant did not pay any rent for July, 2012.

The landlord's agent testified that the tenant left a large amount of garbage which was required to be removed and disposed of. The landlord seeks to recover the cost of the junk removal in the amount of \$613.76.

The tenant testified she did not pay any rent for June 2012, and should not be responsible for any rent for July 2012, as she had vacated the rental unit on June 15, 2012. The tenant further stated she had given the landlord in May 2012, verbal notice she would be vacating the rental unit in June.

The tenant testified that she should not be responsible for any garbage removal. The tenant stated when she took possession of the premises the previous owners had left a large amount of items in the house and garage and it was only these items that were left behind.

Analysis

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

In this case, the evidence was that the tenant did not pay any rent for June 2012 and was served with a notice to end tenancy. The tenant disputed that notice on June 18, 2012 and a hearing was scheduled for July 10, 2012, and the tenant failed to appear.

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the tenant did not pay rent for June 2012, which was due under the terms of the tenancy agreement. I find the tenant has breached section 26 of the Act and the landlord suffered a loss. Therefore, I find the landlord is entitled to compensation for unpaid rent for June 2012, in the amount of **\$600.00**.

The tenant breached the section 26 of the Act by not paying rent and was evicted from rental unit. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must
(a) be signed and dated by the landlord or tenant giving the notice,
(b) give the address of the rental unit,
(c) state the effective date of the notice,
(d) except for a notice under section 45 (1) or (2) [tenant's notice], state the grounds for ending the tenancy, and
(e) when given by a landlord, be in the approved form.

In this case, the evidence of the tenant was she provided verbal notice to end tenancy in May 2012, to end tenancy in June 2012. However, I do not find the testimony of the tenant to be consistent with her actions because on June 18, 2012, the tenant files an application for dispute resolution to cancel a notice to end tenancy. It would not be logical to make such an application if the tenant was no longer living in the unit and had no intention of living there. The Act, states in order to be effective, a notice to end a tenancy must be in writing.

As the tenant breach section 26 of the Act by not paying rent and the tenant was evicted from the rental unit. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement. This

includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy. Therefore, I find the landlord is entitled to compensation for loss of rent for July 2012, in the amount of **\$600.00**.

The evidence of both parties was no move-in inspection was completed at the start of tenancy. The evidence of the landlord was the tenant left behind a large amount of garbage which was disposed of. The evidence of the tenant was when she moved into the rental unit, the previous owner had left a large amount of items and it was only those items that were left behind.

In the absents of any other documents from the landlord , such as a move-in inspection report, which is evidence of the condition of the unit at the start of tenancy and photographs. I find the landlord has failed to provide sufficient evidence to prove the tenant has violated the Act. As a result the landlord claim for junk removal is dismissed.

I find that the landlord has established a total monetary claim of **\$1,250.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$300.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$950.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep a portion of the security deposit in partial satisfaction of the claim. The landlord is granted an order for the balance due.

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: October 05, 2012.

Residential Tenancy Branch