



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for money owed or compensation for damages or loss under the Act, and an order to retain the security deposit in partial satisfaction.

Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail sent on July 27, 2012. The registered mail package was returned with a “refused by addressee” stamp from Canada post.

Given the above, I find the tenant was served in accordance with the Act. I note that refusal or failure to accept service is not grounds for a Review.

Preliminary Issue

In this case, the tenant’s legal name is (KSB), as a result the landlord’s application to amend the style of cause is granted and the style of cause will read (SB) “also known as” (KSB).

Issue(s) to be Decided

Is the landlord entitled to monetary order for unpaid rent?

Is the landlord entitled to monetary compensation for damage or loss under the Act?

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

Background and Evidence

The parties entered into a one year fixed term tenancy agreement, which began on August 1, 2011. The tenancy agreement states that at the end of the fixed term (July 31, 2012) the tenancy would continue on a month-to-month basis. Rent in the amount of \$1,735.00 was payable on the first of each month. A security deposit of \$850.00 was paid by the tenant.

The landlord testified that the tenant did not pay any rent for July 2012, as their rent cheque was returned for insufficient fund. The landlord stated, as a result, the tenant

was served with a ten day notice to end tenancy with a vacated date of July 13, 2012, which was accepted by the tenant. The landlord seeks to recover unpaid rent for July 2012, in the amount of \$1,735.00 and the \$50.00 bank service charged he received for the NFS cheque.

The landlord testified that he advertised the rental unit as soon as he was aware the tenant had vacated the unit, however, he was not able to rent the unit for August 2012 and seeks to be compensated for loss of rent under the Act in the amount of \$1,735.00. Filed in evidence is a copy of the advertisement.

The landlord testified he was required to hire a person to clean the unit as the tenant failed to clean the unit at the end of tenancy. The landlord seeks to recover \$150.00 he paid for cleaning. Filed in evidence is a copy of the receipt.

The landlord testified the tenant did not steam clean the carpets at the end of tenancy. The landlord seeks to recover \$175.84 for carpet cleaning. Filed in evidence is a copy of the receipt.

The landlord testified the tenant was required to pay the utilities under the terms of the tenancy agreement and the tenant failed to do so. The landlord stated he was required to pay the utilities to avoid having that amount transferred to his property taxes. The landlord seeks to recover \$278.35. Filed in evidence is a copy of the utilities bills. Filed in evidence is a copy of a letter for the city clerk.

The landlord testified that he is seeking advertisement cost for the rental unit in the amount of \$125.00.

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.

In this case, the evidence was that the tenant's cheque for July 2012, rent was returned for insufficient funds and the tenant did not pay any rent, 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 July 2012 and the NSF fee in the amount of **\$1,785.00**.

The tenant breached 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. As this tenancy agreement had reverted to a month-to-month agreement at the end of July 2012, the tenant was only responsible to provide one month notice to end tenancy. I find the earliest date the tenant could have legally end tenancy would have been August 31, 2012.

The landlord made reasonable efforts to mitigate the loss by advertising the rental unit which was unsuccessful. Therefore, I find the landlord suffered a loss and is entitled to compensation for loss of rent for August 2012, in the amount of **\$1,735.00**.

I find the tenant did not clean the unit, and this has caused the landlord to suffer a loss. Therefore, I find the landlord is entitled to be compensated for cleaning the unit and cleaning the carpets in the amount of **\$325.84**.

The tenant breached the tenancy agreement by not paying the utilities for the unit. The landlord was required to pay those utilities to ensure that amount was not transferred to his property taxes. I find the tenant did breach the tenancy agreement and the landlord suffered a loss. Therefore, the landlord is entitled to recover the cost of unpaid utilities in the amount of **\$278.35**.

The landlord has request to recover the cost of advertising the rental unit. However, there is no liquated damages clause in the tenancy agreement. Further, this tenancy agreement had reverted to a month-to-month agreement at the end of July 2012 and the tenant was only responsible to provide one month notice to end tenancy. The landlord was granted rent for August 2012, which was an amount sufficient to put the landlord in the same position as if the tenant had not breach the tenancy agreement. I find the landlord is not entitled to compensation for the cost of advertising the unit.

I find that the landlord has established a total monetary claim of **\$4,174.19** 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 **\$850.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3,324.19**.

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 16, 2012.

Residential Tenancy Branch