



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested a monetary Order for unpaid rent and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The details of the dispute section of the application included a claim for loss of June 2012 revenue, which is considered as damage or loss under the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary Order for unpaid rent?

Background and Evidence

The parties agreed to the following facts:

- A tenancy commenced in May 2010, with the tenant and his spouse, the daughter to the landlord, living in the unit;
- Rent was \$750.00 per month, due on the first day of the month;
- A deposit was not paid; and
- The tenant (the landlord's now ex-son-in-law) vacated the unit on May 5, 2012.

The landlord has claimed the loss of May 2012 rent plus loss of rent revenue for June 2012 in the sum of \$1,500.00.

The landlord confirmed that once her son-in-law vacated the unit, her daughter remained and rent was set at \$375.00 per month. The landlord's daughter paid rent in May and has continued to do so.

The landlord submitted a cheque issued by the tenant in the sum of \$750.00 for May 2012 rent owed; that cheque was returned as NSF. The tenant said that the cheque had been issued prior to the marital break-down.

The landlord supplied a copy of an email dated April 23, 2012, in which the tenant confirmed that he was the one paying rent and if his spouse's parents wished to take action as landlords, they were welcome to do so. The tenant said that he was pointing out that he had been making payments on his own, vs. receiving assistance from his spouse.

Analysis

When making a claim for damages under a tenancy agreement or the *Act*, the party making the allegations has the burden of proving their claim. Proving a claim in damages requires that it be established that the damage or loss occurred, that the damage or loss was a result of a breach of the tenancy agreement or *Act*, verification of the actual loss or damage claimed and proof that the party took all reasonable measures to mitigate their loss.

Section 45(1) of the *Act* provides:

45 (1) *A tenant may end a periodic tenancy by giving the landlord 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, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The parties confirmed that proper notice was not given; although I find, from the email evidence supplied by the landlord dated April 23, 2012 that by that date the landlord understood the tenant was planning on vacating. The notice given, verbally, did not comply with the *Act*.

Section 7 of the *Act* provides:

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord*

or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord has claimed compensation for rent that was not paid in May and for loss of rent in June, 2012, totaling \$1,500.00. The landlord confirmed that once the tenant vacated, her daughter remained in the unit and immediately began paying \$375.00 per month. There was no evidence before me that the landlord attempted to mitigate the loss she is now claiming, by advertising the unit for an additional occupant or that any other steps were taken to minimize the loss claimed.

I find that effective May 6, 2012, the landlord entered into a new tenancy agreement with her daughter at a rent of \$375.00 per month. Once this new tenancy was created and the landlord's daughter began to pay rent, as she did in May 2012; no loss can be said to have resulted from the previous tenancy. It was the choice of the landlord to enter into a new tenancy, for a reduced level of rent.

The landlord was at liberty to advertise the rental unit in an attempt to minimize the loss claimed; but instead, the landlord lowered the rent and commenced a new tenancy with her daughter.

Therefore, in the absence of any attempt to minimize the loss claimed, I find that the claim for unpaid May rent and loss of revenue for June 2012 is dismissed.

Conclusion

The claim is dismissed.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 02, 2012.

Residential Tenancy Branch