



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNDC, MNSD, FF

Introduction

This Dispute Resolution hearing to deal with an Application by the landlord for a monetary order against the tenant for compensation for damage or loss under the Act and to retain the security deposit as partial satisfaction for the amount claimed.

Despite being served by registered mail sent on July 10, 2012, the respondent did not appear.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation under section 67 of the Act?

Background and Evidence

The landlord submitted into evidence a copy of the tenancy agreement, a copy of the rental application, a copy of the "Move-out Report", a copy of a document titled, "Move-In/Move Out/Charge Analysis" showing a forwarding address for the tenant and proof of service.

The landlord testified that the tenancy began on January 30, 2006 and ended July 31, 2012. The rent was \$568.84 and a security deposit of \$245.00 was paid.

The landlord testified that the tenant gave short notice and moved out at the end of July 2012. The landlord was not able to testify exactly when the tenant gave Notice to end the tenancy, but stated that it was sometime in July 2012 and was effective for the end of July 2012. The landlord testified that \$50.00 was still owed for the month of July 2012. The landlord is seeking this compensation as well as \$568.84 loss of rent for the month of August 2012.

The landlord did not submit evidence verifying that the rental unit was advertised during July 2012.

Analysis

With respect to an Applicant's right to claim damages from another party, Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord.

Section 45 of the Act permits a tenant to 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.

I find that the landlord was not able to verify the exact date that the tenant gave notice to end the tenancy. However, I accept that the tenant did not give adequate notice as required under the Act and that the tenant had vacated the unit by the end of July 2012. I find that the landlord failed to sufficiently prove that a loss of rent was genuinely incurred by the landlord for the month of August. In addition, I find that the landlord did not sufficiently prove that element 4 of the test for damages was met, because no evidence was submitted to show that reasonable steps were taken to minimize the loss by advertising to re-rent the unit.

Accordingly, I find that the landlord's monetary claim for loss of revenue against the tenant must be dismissed.

With respect to the security deposit, I find that the tenant is entitled to be refunded the \$253.66 security deposit and interest forthwith. Accordingly, I hereby issue a monetary

order in favour of the tenant for \$253.66. This order must be served on the landlord and, if unpaid, may be filed in Small Claims Court.

Conclusion

The landlord's application is dismissed without leave to reapply and the tenant is issued a monetary order for the refund of the security deposit and interest.

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: November 05, 2012.

Residential Tenancy Branch