



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 was set to deal with an Application by the landlord for a monetary order for rent owed and an order to keep the security deposit.

Both parties appeared at the hearing and gave evidence.

Preliminary Matter

During the hearing the landlord requested an amendment to the landlord's application to add a monetary claim for damages including cost of carpet cleaning, reimbursement for unreturned keys and loss of revenue beyond the tenant's occupancy.

If denied, the landlord would be at liberty to make a separate application seeking these damages. However, the tenant agreed to proceed with these matters and the landlord's request for an amendment to the application to add the monetary claims for damages was allowed on consent.

Issue(s) to be Decided

The issue to be determined, based on the evidence, is whether the landlord is entitled to compensation under section 67 of the *Act* for rent and damages.

Background and Evidence

The landlord testified that the fixed term tenancy began on July 15, 2011 and according to the tenancy agreement was to expire on July 31, 2012. The tenant disputed this and argued that, a letter was received from the landlord at the start of the tenancy stating that the tenancy agreement would expire June 30, 2012. The tenant stated that a copy of this letter was in evidence, but they did not have enough time to serve the evidence on the other party.

The rent was set at \$935.00, due on the 1st of each month and a security deposit of \$487.50 was paid. A copy of the tenancy agreement, copies of communications, copies of advertisements and a copy of move-in and move-out condition inspection reports were in evidence.

The landlord testified that, on July 4, 2012, the landlord received a notice from the tenant that the tenants were vacating the unit on June 30, 2012. Although the notice was dated June 20, 2012, the envelope was post marked July 3, 2012. A copy of the Notice and the envelope was in evidence. The landlord stated that the tenant had terminated the agreement prematurely and also failed to give adequate notice to end the tenancy. The landlord testified that, although they immediately listed the rental unit for rent, no replacement tenant was found until September 2012. The landlord testified a loss of rent in the amount of \$935.00 July 2012 and \$935.00 for August 2012, was incurred and is being claimed.

The tenant's position is that the letter from the landlord clearly set the termination date for ending the tenancy as June 30, 2012. The tenant did acknowledge that they had given late notification of their move-out date. However, the tenants object to the landlord's claim for compensation covering the month of August 2012. The tenant also stated that other vacancies that came up in the building were frequently advertised and the landlord's evidence consisting of copies of their advertisements may have pertained to these other units.

The landlord is claiming compensation for the cost of missing keys. The landlord testified that the tenants failed to return costly keys for the unit and for the mailbox. A loss of \$285.00 was apparently incurred to re-key the unit and this is being claimed.

The tenant's acknowledged that they had not returned the keys, but stated that these would be returned forthwith.

The landlord testified that the tenants failed to have the carpets cleaned prior to leaving and pointed out that this is contrary to the Act. The tenants testified that they left the unit in a reasonably clean state, as required by the Act, and did "spot cleaning" of the carpets.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement. I find that the tenant paid rent for the months during which they were in possession of the rental unit and had vacated the unit prior to July 1, 2012 when rent was due for July 2012.

In regard to the Notice provided by the tenant, I find that section 45 of the Act permits a tenant to end a month-to-month 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.

(2) A tenant may end a fixed term 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,

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

(c) 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.

Section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with the Act, the regulations or their tenancy agreement. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount, and to order payment under these circumstances.

I find that, in order to justify payment of damages under section 67, the Applicant would be required to satisfy each component of the test below:

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 Respondent's 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 reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In the case before me, I find that, even if I accept the tenant's position that the fixed term of the tenancy expired June 30, 2012, based on the letter they received from the landlord at the start of the tenancy, I would still find that the tenant had violated the Act by ending the tenancy without giving sufficient Notice in compliance with section 45 of the Act, resulting in a loss of \$935.00 incurred by the landlord for July, 2012.

With respect to the landlord's claim for loss of rent for the month of August 2012, I find that the landlord did not submit documentary evidence to verify the date that the unit was re-rented and has therefore not sufficiently met the test for damages. I find that the landlord is not entitled to be compensated \$935.00 for the loss of rent for August 2012.

In regard to the claim for the cost of changing the locks, I accept the tenant's stated commitment to return the keys. Therefore this portion of the landlord's claim is dismissed with leave to reapply, should the missing keys not be returned within two weeks of this decision.

With respect to the cost of the carpet-cleaning, I find that the tenant had an obligation to shampoo the carpets at the end of the tenancy and the landlord is entitled to be compensated \$110.00 for the cost.

Based on the evidence, I find that the landlord is entitled to be compensated \$1,095.00. comprised of \$935.00 loss of revenue for July 2012, \$110.00 for carpet cleaning and the \$50.00 cost of this application. I order that the landlord retain the tenant's security deposit of \$467.50 in partial satisfaction of the claim, leaving a remainder of \$627.50 still outstanding in favour of the landlord.

Based on the testimony and evidence presented during these proceedings, I hereby grant the landlord a monetary order under section 67 of the Act for \$627.50. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order under section 67 of the Act for \$627.50 for loss of rent for July 2012 and carpet cleaning. The landlord's claim for loss of rent for August is denied. The landlord's claim for the cost of changing the locks is dismissed with leave to reapply.

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 08, 2012.

Residential Tenancy Branch