



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNSD, FF

Introduction

This is an application by the landlord for monetary compensation for loss of rent for October 2012, due to the tenant's action in vacating early without adequate notice, prior to the termination date indicated on the landlord's One Month Notice to End Tenancy for Cause.

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

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for loss of revenue?

Background and Evidence

This tenancy began in February 2012 with rent of \$795.00 and a security deposit of \$387.500 was paid.

The landlord testified that the tenant was issued with a One Month Notice to End Tenancy for Cause with effective date ending the tenancy on October 31, 2012. However, the tenant vacated the unit on October 1, 2012 without paying any rent for October. The landlord testified that a loss of \$795.00 revenue for the month of October 2012 was incurred and the landlord is claiming compensation of \$795.00 plus late fees and the \$50.00 cost of the application.

Analysis

An Applicant's right to claim damages from another party is dealt with under section 7 of the Act which 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.

I find it important to note that in a claim for damage or loss under the Act, the party making the claim bears the burden of proof and the evidence furnished by the applicant must 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 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 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 and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

With respect to rent owed on October 1, 2012, I find that section 26 of the Act states that rent must be paid when it is due under a tenancy agreement. I find that as of October 1, 2012, the tenant owed \$795.00 and violated the Act and the agreement by not paying and by suddenly vacating without adequate notice, earlier than the date that the tenancy was scheduled to end. I find that, as a result, the landlord incurred a loss because the unit was vacant and could not be successfully re-rented for the month of October 2012.

I find that all elements of the test for damages have been met and the landlord is therefore entitled to be compensated \$795.00.

With respect to the landlord's claim for the \$20.00 late fees pursuant to a term in the tenancy agreement, I find that the tenant terminated the tenancy prior to the rent for October 2012 being in arrears. Once a tenancy is terminated by either party, the applicable terms contained in the contract, including late fees, would no longer be in effect. As the tenancy agreement was ended by the tenant, I find that the contractual term allowing a late-fee term cannot be enforced. Accordingly, I find that this portion of the landlord's claim must be dismissed.

Given the above, I find that the landlord established a total monetary claim of \$845.00.00 comprised of \$795.00 for loss of revenue and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the tenant's \$387.50 security deposit in partial satisfaction of the claim leaving \$457.50 still outstanding.

I hereby grant the landlord an order under section 67 for \$457.50. 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.

The remainder of the landlord's application is dismissed without leave.

Conclusion

The landlord is successful in the application and is granted a monetary order for \$457.50.00 and an order to keep the tenant's security deposit to satisfy the remainder of the claim.

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: January 10, 2013.

Residential Tenancy Branch

