



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for unpaid rent, for cleaning and repairing the rental unit, for the security deposit in partial satisfaction of the claim and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure, however, I refer to only the relevant facts and issues in this decision.

Preliminary Matters

At the outset of the hearing the Tenant explained there had been a prior hearing between the parties, in which the Tenant was granted the return of the security deposit. I have referenced the file number for the earlier Decision on the cover page of this Decision. According to the evidence before me, the Landlord applied for a Review of that Decision, although the Review Hearing was dismissed due to lack of appearances by either party.

I find the security deposit has already been dealt with and I have no authority to alter that Decision, under the legal principle of *res judicata*. Therefore, the issue of the security deposit is dismissed without leave to reapply.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenant for unpaid rent, or for damages or cleaning of the rental unit?

Background and Evidence

On August 23, 2011, the parties signed a written tenancy agreement. The agreement sets out that the tenancy started on September 15, 2011, and had an initial term of one year and one day, until September 15, 2012, following which the tenancy would continue on a month-to-month basis. The rent was \$950.00 per month.

The Agent for the Landlord testified that the Tenant did not give a written Notice to End Tenancy to the Landlord and left the rental unit on June 15, 2012.

The Landlord's position is that the Tenant breached the Act and tenancy agreement by ending a fixed term tenancy improperly.

The Agent for the Landlord testified that he listed the rental unit on a popular Internet website and was able to re-rent the suite on July 1, 2012, although the rent was reduced to \$700.00 for the new renters.

The Landlord is claiming \$475.00 for lost rent for the last 15 days of June 2012, and \$250.00 for each of July and August, and \$125.00 for 15 days in September of 2012, for loss of rental income.

The Landlord is also claiming for alleged damages to, and cleaning of, the rental unit.

The Landlord alleges the Tenant damaged the tiles and a metal strip on the steps of the entryway to the rental unit. In evidence to support this, the Landlord has provided photographs of the tiles and the strip, and an estimate of the repair costs, in the amount of \$468.71.

The Landlord is also claiming for cleaning the house and yard, in the amount of \$224.00.

In reply to the Landlord's claims, the Tenant testified she gave the Landlord a one month Notice to End Tenancy on April 29, 2012, to end the tenancy on June 15, 2012. The Tenant testified she ended the tenancy because she could no longer afford the rent.

The Tenant testified that the Landlord did not perform either incoming or outgoing condition inspection reports, and that the photographs of the alleged damages to the

entryway were taken in November of 2012, after she had moved out, and apparently after the new renters had occupied the rental unit.

The Tenant denied all of the Landlord's claims.

Analysis

Based on the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*.

Accordingly, the Landlord here must prove the following:

1. That the Tenant violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

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 *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

In this instance, I find the Landlord has established that the Tenant breached section 45 of the *Act* by breaching a fixed term tenancy without proper authority to do so.

Under section 45(2) of the *Act*, the Tenant was not allowed to end a fixed term tenancy without an order from an Arbitrator to end the tenancy, or without other authority under the *Act* to end it.

For example, the Tenant might have used section 45(3) of the *Act*, which required them to give the Landlord a written notice of the alleged breach of a material term of the tenancy, and a reasonable amount of time to address the alleged breach of the material

term of the tenancy. If the Landlord had not corrected the alleged material breach within the reasonable amount of time, then the Tenant may have given the Landlord notice she was ending the tenancy.

However, in this instance, I find the Tenant had no authority whatsoever to end the tenancy, and breached the Act and tenancy agreement in doing so.

As to the other claims, I find that the Landlord had insufficient evidence to prove the Tenant had breached the Act by damaging the tiles and metal strip at the front entryway, or by failing to clean the rental unit to a reasonable state at the end of the tenancy.

The Landlord did not perform an incoming condition inspection report, and therefore had no evidence of the condition of the tiles or metal strip at the entryway before the Tenant moved in. I find the Landlord has failed to prove the Tenant did these alleged damages.

The Landlord also had insufficient evidence of the cleaning that was required in the rental unit, or of the outside yard. The Landlord did not provide a detailed invoice for this work, nor was there specific evidence, such as photographs, of the condition of the rental unit after the Tenant had left. I find the Landlord has failed to prove the Tenant left the rental unit without cleaning it to a reasonable level.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

I find that the Landlord has established that the Tenant breached the Act and tenancy agreement by ending the fixed term tenancy early without authority to do so.

I allow the Landlord the rent for the last half of June 2012, in the amount of \$475.00 for this breach.

I do not award the Landlord any further compensation on the loss of rent, as I find the Landlord has failed to prove that they mitigated the loss by adequately advertising the rental unit. The Agent testified that they listed the rental unit on a popular Internet website; however, there was no evidence of how often the ad was placed or when it was renewed, and no explanation of why the Landlord had to lower the monthly rent by

\$250.00, within two weeks of starting to advertise the rental unit. I find the Landlord has failed to prove they mitigated the loss as required under section 7(2) of the Act.

I find the Landlord has established a total monetary claim of **\$500.00** comprised of \$475.00 in loss of rent for one half month and \$25.00 toward the filing fee for the Application, and I grant and issue an order in these terms. I have reduced the filing fee for the Application due to the limited success of the Landlord.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

I note that the parties are at liberty to offset the award granted to the Tenant for the return of the security deposit and this award to the Landlord for the breach of the Act by the Tenant.

Conclusion

The Tenant ended a fixed term agreement without authority to do so under the Act or tenancy agreement. The Landlord is entitled to one half month of loss of rent. The other claims of the Landlord are dismissed due to insufficient evidence.

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: February 27, 2013

Residential Tenancy Branch

