



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROLINE MANAGEMENT LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, and an order to retain the security deposit in partial satisfaction of the claim.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

Preliminary Issue

At the outset of the hearing a person claiming to be an agent for the tenant attended the hearing, however, there was no letter from the tenant in the file giving permission to have another person attend and act on her behalf. I asked this person if the tenant could attend the conference to confirm that the tenant has authorized her to act on her behalf.

The tenant attended the conference and gave permission for this person to act as her agent at the hearing. The tenant did not remain in the conference and the tenant did not provide any affirmed testimony.

During the hearing, the agent for the tenant was disrupting the other party's presentation with comments, such as "you are lying" and making demands. The agent was cautioned that this was inappropriate behavior. The agent was also argumentative during the course of the hearing. The agent was cautioned on several occasions during the hearing that her behavior was inappropriate, however, I did not have the agent excluded from the hearing.

Issues to be Decided

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

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on March 1, 2012 and was to expire on February 28, 2013. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenant.

The landlord's agent testified that on October 19, 2012, they received an email from the tenant stating she was breaking the fix term agreement and would be vacating the rental unit on November 30, 2012. The landlord responded to that emailing which put the tenant on notice that they are responsible for the rent for the entire fixed term or until the unit was re-rent.

The landlord's agent testified that on October 22, 2012, they advertisements the rental unit on several popular websites and the rent was posted at \$925.00. Filed in evidence are copies of advertisements.

The landlord's agent testified that they showed the unit between November 9 and December 19, 2012, to nine potential renters and found a suitable tenant and the tenancy commenced on December 28, 2012. The landlord's agent stated they collected four days of rent in the amount of \$121.64, from the new tenant.

The tenant's agent testified that she was told by the tenant the landlord first advertised the rental unit for \$1,000.00 and as soon as the tenant questioned the landlord the rent was lowered to \$925.00. The tenant's agent believes the landlord did not mitigate the loss by increasing the rent and should not be entitled to any compensation.

The tenant writes in a summary, I (tenant) noticed advertising for the rental unit on free site only for more than what I was paying for rent per month for the month of Nov 2012. It was advertised for \$1000/month and I was paying \$950/month as written in the tenancy agreement.

[Reproduced as written.]

Analysis

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

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlord has the burden of proof to prove their claim.

Section 45 of the Residential Tenancy Act states:

45 (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,

[Emphasis added.]

In this case, the evidence of landlord's agent was the tenant gave them notice by email on October 19, 2012, to end the tenancy on November 30, 2012. However, the parties had entered into a fixed term tenancy agreement, and under section 45 of the Act the tenant cannot end a fixed term tenancy earlier than the date specified in the tenancy agreement.

Therefore, I find that the tenant has breached section 45 of the Act, as the earliest date they could have legally ended the tenancy was February 28, 2013, as stated in the tenancy agreement.

As a result of the tenant not complying with the terms of the tenancy agreement or the Act, the landlord suffered a loss rent for December 2012. The evidence of the landlord's agent was they were able to find a new tenant commencing December 28, 2012 and were able to recover a portion of rent for December 2012, from the new tenant reducing the loss they suffered.

In this case, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7 of the Act, a party claiming compensation for loss must do whatever is reasonable to minimize the loss.

In this case, the evidence of the landlord's agent was the rental unit was advertised on several popular websites, commencing October 22, 2012, and the rent was posted at \$925.00 per month. The landlord has submitted documentary evidence to support their claim. The evidence of the tenant's agent was that she was told by the tenant that the landlord had first posted the rent at a higher amount of \$1,000.00 and that this was later corrected by the landlord. The tenant has provided a written summary claiming that the rent was posted at a higher amount, however, there was no documentary evidence to support her position, such as a copy of the advertisement showing the unit was advertised at a higher amount.

As a result, I accept the evidence of the landlord's agent that they made reasonable efforts to minimize the loss by advertising the rental unit and collecting a portion of rent from the new tenants. Therefore, I find the landlord is entitled to recover the difference between the rent owed by the tenant (\$950.00) and the rent collected from the new tenant (\$121.64). I grant the landlord for the loss of December 2012, rent the amount of **\$828.36**.

I find that the landlord has established a total monetary claim of **\$878.36** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the deposit and interest of **\$475.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$403.36**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: March 13, 2013

Residential Tenancy Branch

