



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MND, MNR, MNDC, FF

Introduction

This was an application by the landlord, orally amended during the hearing, for a monetary order solely for unpaid rent and loss of revenue, and to retain the security deposit in partial satisfaction of their monetary claim, and to recover the filing fee.

Both parties participated in the hearing with their submissions, document evidence and relevant testimony during the hearing. The parties were also provided with an opportunity to settle their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The relevant undisputed testimony in this matter is that the tenancy started October 01, 2010 and ended on May 27, 2012. The monthly rent payable under the tenancy agreement was \$2500.00. At the start of the tenancy the landlord collected a security deposit of \$1250.00 which the landlord retains in trust. The tenant vacated on or near May 27, 2012. The tenant agrees they did not pay the rent for April and May 2012. The parties agree that the tenant did not provide the landlord with a written Notice to end the tenancy, although the parties agree that in April and in May 2012 there was some verbal communication between the parties that the tenant planned to vacate the rental unit in May 2012.

The landlord claims that the lack of written notice to end the tenancy in accordance with the Act caused the landlord a loss of revenue for June 2012 as they could not confidently re-rent the unit for earlier than July 01, 2012. Therefore, the landlord seeks loss of revenue equivalent to one month's rent for June 2012. The tenant argues that the landlord knew they were vacating and could have planned accordingly.

Analysis

Under the *Act*, the party claiming the damage or loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following 4 point test established by Section 7 of the Act, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

1. Proof the damage or loss exists,
2. Proof the damage or loss were the result, *solely, of the actions or neglect of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss or 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.

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the damage or loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss or damage. Finally, the landlord must show that reasonable steps were taken to address the situation and to *mitigate or minimized* the loss incurred.

The evidence in this matter is that the rent for April and May 2012 was not paid and therefore I find it is owed to the landlord in the sum of **\$5000.00**.

In the absence of written notice to vacate as per Section 45 of the Act I find the landlord was not legally obligated to seek a new tenant until the tenant of this matter actually vacated. I find the tenant vacated May 27, 2012 and in accordance with Section 7 of the Act the landlord was then required to take reasonable steps to mitigate any potential losses of future rent. The landlord has not provided evidence of such; however, I accept that the landlord would, on balance of probabilities, unlikely be able to garner a new tenant for June 01, 2012. I do not accept that this would be the case for June 15, 2012. As a result, I grant the landlord one half month's rent for June 2012 in the amount of **\$1250.00**, without leave to reapply. The landlord is also entitled to recovery of the **\$100.00** filing fee, for a total entitlement of **\$6350.00**. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears	\$5000.00
Loss of revenue for June 2012	\$1250.00
Filing Fees for the cost of this application	100.00
Less Security Deposit	-1250.00
Total Monetary Award	\$5100.00

Conclusion

I Order that the landlord retain the deposit of \$1250.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$5100.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: April 29, 2013