



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, FF

Introduction

The hearing was to deal with an application by the landlord for \$1,000.00 for rent the landlord claims is owed for the month of June 2013.

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 affirmed testimony and relevant evidence that was properly served.

Issues to be Decided

Is the landlord entitled to monetary compensation for rent or loss of rent?

Background and Evidence

The landlord testified that the tenancy originally began approximately 2 years ago and rent was \$1,000.00 per month plus 25% of the utility costs including hydro, gas, cable and internet. No security deposit was paid. The tenancy was month-to-month and no written agreement was signed.

The landlord testified that on April 30, 2013, the tenant verbally advised her that he was going to move out. According to the landlord, the tenant did not provide a specific date and stated that he wasn't sure where he was going to go. The landlord testified that on the following day, she gave the tenant a letter advising the tenant that his notice to end the tenancy must be in writing. A copy of this communication dated May 1, 2013 is in evidence and is excerpted below:

"Lawyer has advised me to let you know that you need to give I full months WRITTEN notice as per Residential Tenancy"

Agreement.....P.S. We will miss you & I hope that you are happier in your new living quarters.” (Reproduced as written)

The landlord testified that she finally received written notification from the tenant on May 5, 2013 notifying the landlord that the tenant would be vacating on May 31, 2013. The landlord pointed out that this notice did not comply with the Act in that the tenant was required to provide one full month notice to move out.

The tenant's son, who attended on behalf of the tenant, testified that the landlord was aware before May 1, 2013 that the tenant was intending to vacate the rental unit at the end of May. The tenant testified that this fact was evidenced in the May 1, 2013 letter from the landlord, where the landlord acknowledges her conversation with the tenant on April 30, 2013 and clearly accepts that he had given a final notice to vacate.

The tenant's son testified that the landlord was also fully aware that his elderly father, in his 90s is in seriously ill health and has not been capable of writing on his own. The tenant testified that, in fact, during the tenancy, the landlord has routinely filled in the tenant's rent cheques on the tenant's behalf for the tenant to sign, as he no longer has the physical capacity to write. The tenant's agent also questioned why the landlord did not advise the tenant, when they were discussing his desire to terminate the tenancy on April 30, 2013, that the verbal notice was not sufficient and that he had to submit his Notice in writing. The tenant's agent questioned why the landlord chose to delay making this request.

The landlord testified that she began to advertise the unit as of May 5, 2013. The landlord did not include evidence confirming the date, nor the details of the ads she placed. However, the landlord stated that the unit was advertised for \$1,100.00 per month including utilities, except for the cable/internet. The landlord acknowledged that this was \$100.00 more than the tenant was paying, but pointed out that this amount included utilities, while the respondent tenant's rent did not include utilities, which were charged separately.

The landlord testified that the advertisements did not generate much response until closer to the end of May, 2013, at which time there were 5 candidates interested in renting the unit. However, according to the landlord, they all were seeking to move in on July 1, 2013, not June 1, 2013. The landlord testified that she successfully rented the unit on July 1, 2013. The landlord did not submit a copy of this new tenancy agreement to verify the dates she provided through her testimony.

The landlord testified that, because the tenant violated the Act by not providing written Notice to end tenancy by April 30, 2013, to properly terminate the agreement effective May 31, 2013, and instead chose to wait until May 5, 2013, the rental unit was left vacant during June 2013. The landlord stated that she incurred a loss of revenue for the month of June and is claiming compensation of \$1,000.00.

The tenant's agent questioned the landlord's purported efforts to mitigate her loss by making a reasonable attempt to re-rent the unit as quickly as possible.

The tenant had submitted documentary evidence contradicting the landlord's claim that she advertised the unit for rental rate of \$1,100.00 including utilities. The tenant submitted copies of 2 advertisements and communications relating to the rental.

One of the advertisements, submitted in the tenant's evidence was dated May 19, 2013, and showed the dispute address, with a write-up about the suite and a photo, as well as the landlord's phone number as a contact. This advertisement stated that the monthly rental rate to be charged was \$1,200.00 monthly, not including utilities.

Also placed in evidence by the tenant was a second advertisement placed through an accommodation service website. This included a write-up and pictures of the unit, along with a copy of a communication, apparently from the rental agent, stating that the unit was being rented for \$1,450.00 per month, entailed a one-year fixed term lease and that it could not be viewed until May 29, 2013 or June 1, 2013.

The tenant's position is that the landlord failed to make reasonable attempts to minimize the loss by advertising at a higher rental rate and this delayed the re-renting of the suite.

The tenant's agent brought up other alleged violations of the Act perpetrated by this landlord, that he testified occurred during the tenancy. However this testimony was found not to be relevant to the matter before me, which is the landlord's monetary claim.

Analysis:

Although the landlord's application is claiming rental arrears for the month of June 2013, I find that this tenancy actually terminated on May 31, 2013. Therefore, under the Act, the landlord's claim is not for unpaid rent pursuant to section 26 of the Act.

I find that the \$1,000.00 for June 2013, constitutes a claim for loss of revenue under section 7 and 67 of the Act and relates to damages occurring *after* the tenant's termination of the tenancy on May 31, 2013. The landlord testified this loss was caused by the tenant's violation of the Act in giving inadequate Notice to End Tenancy.

I find that the claim is for damages. I find that 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, and
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage. (my emphasis)

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 by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

Section 45 of the Act permits a tenant to end a periodic 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.

I accept that the tenant did provide verbal Notice to the landlord on April 30, 2013 terminating his tenancy. However, section 52 of the Act states that, in order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,

I find that the tenant was in violation of section 45 of the Act by not providing sufficient Notice in compliance with section 45 and 52 of the Act to terminate the tenancy.

On the question of whether or not the tenant's noncompliant Notice caused the landlord's loss of revenue for the month of June 2013, I find that the landlord must first satisfy element 3 of the test for damages by proving that the new tenancy will begin on July 1, 2013. I find that no evidence was submitted to support the landlord's verbal testimony in this regard in order to prove that the new tenancy began in July 2013.

With respect to the landlord's obligation to meet element 4 of the test for damages, I find that the onus is on the landlord to prove that she took reasonable steps to mitigate her loss of revenue.

I am fully satisfied that the landlord did receive late Notice from the tenant, contrary to the Act, and I readily accept the landlord's verbal testimony and communications that clearly verify she did place market the unit seeking renters. I am also satisfied that the landlord's efforts were eventually successful in finding a replacement tenant as of July 1, 2013, leaving the unit vacant during June 2013.

However I find that the landlord's verbal testimony is not sufficient to adequately meet the burden of proof sufficient to satisfy element 4 of the test for damages by showing the reasonable efforts she made to mitigate her losses. The landlord's testimony about making reasonable efforts to mitigate was disputed by the tenant. Moreover, I find that the landlord should have been prepared to verify the dates and nature of the advertisements with evidentiary material. This was particularly important in order to defend against or refute the documentary evidence submitted by the tenant that clearly contradicts the landlord's verbal claims.

Based on the preponderance of evidence before me, I accept the tenant's position that the landlord apparently attempted to market the rental unit at a higher rental rate than that paid by the tenant during his tenancy. I further find that the higher rate may have contributed to the landlord's failure to find a

tenant to move into the unit on June 1, 2013 and likely caused, or contributed to, the resulting loss of \$1,000.00 due to the vacancy in June 2013.

Given the above, I find that the landlord's claim does not satisfy the test for damages and the landlord is therefore not entitled to any monetary compensation from the tenant for loss of revenue for the month of June 2013.

I hereby dismiss the landlord's application in its entirety without leave to reapply.

Conclusion

The landlord's application seeking compensation for damages and losses is not successful and is dismissed without 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: June 12, 2013

Residential Tenancy Branch