



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC

Introduction

This was an application by the landlord for loss of rent, advertising expenses, compensation for harassment and loss of revenue as a result of the breach of a fixed term tenancy. All parties attended the hearing.

Issue(s) to be Decided

Was there a valid tenancy agreement?

Is the landlord entitled to recover for the loss of revenue, expenses, rent and compensation for harassment?

Background and Evidence

Service of the application was admitted. The landlord L.V. testified that the respondent viewed the suite for rent on March 10 and 11, 2013 prior to agreeing to rent it on March 13, 2013. The tenant paid \$ 407.50 security deposit and agreed to rent the unit at \$ 815.00 per month for rent commencing April 1, 2013 for a 3 month fixed term. The landlord testified that he did not give a written tenancy agreement because it is not his policy to do so until the tenant moves in. L.V. testified that on March 15 the respondent called him and advised that he wanted his security deposit back as he found a cheaper apartment. L.V. testified that he told the respondent it was impossible as he had already deposited the rent. L.V. testified that the respondent commenced a campaign of calling him daily for at least two weeks demanding his money back and threatening him with legal action and that he would send the Hell's Angel's to ruff him up. Although the landlord provided no evidence of what effect these calls had on him personally he is claiming the sum of \$ 3,000.00 as compensation for harassment. The landlord testified that he received a letter from the tenant dated March 25, 2013 around April 1, 2013 in which the respondent mentions for the first time, that he refused to

take the unit because he heard the building had a bedbug and cockroach problem. The respondent requested return of his security deposit. L.V. testified that he advertised the unit for rent in the newspaper commencing on March 16, 2013 and he is claiming for recovery of that expense at \$ 424.48. L.V. testified that he was able to rent the unit commencing on May 1, 2013 for a higher rent of \$ 820.00. L.V. is claiming for loss of rent for April at \$ 8.15. L.V. denied that the building has a cockroach or bedbug problem but admitted after being questioned that it did have a problem in one unit three years ago but it was treated then. L.V. also admitted after being questioned that a year ago another tenant made a false accusation that the unit was infested and as a result the city compelled him to have a contract with an extermination company to treat the building monthly on an ongoing basis. L.V. vigorously denies that there ever was an infestation or a problem.

G.C. the respondent admitted agreeing to renting the unit on March 13, 2013 at \$ 815.00 per month commencing on April 1, 2013 and to giving the applicant a security deposit on March 13, 2013. G.C. however states that on March 15, 2013 he called the landlord to cancel because he found out by searching the "bedbug registry" on the internet that the building had a problem dating back to 2009 and a bad landlord. He asked for his money back and testified that at first L.V. agreed then repeatedly told him to call back or come over. G.C. called repeatedly at the request of L.V. and attended the building to find him. G.C. testified that on several occasions when he attended at the building he met the current tenant of the unit and others who all advised him that the unit in particular and building had a bed bug and cockroach infestation problem. G.C. denied ever threatening L.V. other than telling him he would pursue all his legal rights to get his money back. G.C. requested the return of his security deposit.

Analysis

Section 16 of the Act states:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Section 44 of the Act states

44 (1) A tenancy ends only if one or more of the following applies:
agreement that provides that the tenant will vacate the rental unit on the date specified as the end of the tenancy;
(c) the landlord and tenant agree in writing to end the tenancy;

I find that the parties entered into a valid tenancy agreement on March 13, 2013 regardless of whether there was a written agreement. I find there was an implied term in this tenancy that the unit must be fit for the purposes promised or contracted for. It is the respondent who must prove that the unit was not fit or unsafe to occupy or otherwise a breach of section 32(1) of the Act. The respondent alleges that the landlord by withholding a cockroach or bedbug infestation breached the implied material term of the tenancy thereby enabling him to end the tenancy.

Section 8 of Residential Tenancy Policy Guideline states:

Material Terms

A material term is a term that the parties both agree is so important that the most trivial breach of that term gives the other party the right to end the agreement.

To determine the materiality of a term during a dispute resolution hearing, the Residential Tenancy Branch will focus upon the importance of the term in the overall scheme of the tenancy agreement, as opposed to the consequences of the breach. It falls to the person relying on the term to present evidence and argument supporting the proposition that the term was a material term.

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

Where a party gives written notice ending a tenancy agreement on the basis that the other has breached a material term of the tenancy agreement, and a dispute arises as a result of this action, the party alleging the breach bears the burden of proof. A party might not be found in breach of a material term if unaware of the problem.

I find that G.C. has not adduced and reliable evidence that the building and in particular the actual unit was in fact unfit to reside in because of any infestation. All G.C. had adduced is hearsay evidence that is tantamount to speculative gossip from a private web site and alleged discussions with individuals who have not come forward to testify or provide written statements. Furthermore G.C. had not given the landlord a deadline to either remedy the alleged problem or show G.C. that the unit was not infested. It is the respondent who has the burden to establish there was a material breach on the evidence. I find that G.C. failed to do satisfy this burden on the balance of probabilities.

Having found that there was a valid tenancy agreement, I further find that G.C. was in breach by repudiating it when he advised L.V. that he wanted his security deposit back as he would not move in on April 1, 2013. I further find that the landlord accepted the

repudiation, treating the contract at an end and mitigated his loss by re-renting the unit at a higher rental amount and therefore only suffered a loss of \$ 815.00 less the additional \$ 10.00 for two months. I therefore I award a loss of revenue amounting to \$ 805.00 for April to the applicant. I allow the advertising expenses of \$ 424.48. However I have dismissed the applicant's claim for \$ 3,000.00 for harassment as such a claim is not available in residential tenancy law and alternatively because the applicant has not proven that he actually was intimidated or suffered from any alleged harassment. I find that the applicant has proven a total claim of \$ 1,229.48. The applicant is entitled to recover the \$50.00 filing fee for this application for a total claim of \$ 1,279.48.

Conclusion

I order that the applicant retain the deposit and interest of \$ 407.50 and I grant the applicant an order under section 67 for the balance due of **\$ 871.98** This order may be filed in the Small Claims Court and enforced as an order of that Court. This Decision and all Orders must be served on the respondent as soon as possible.

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 25, 2013

Residential Tenancy Branch