



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent; and
2. To recover the cost of filing the application.

The tenants' application is seeking an order as follows:

1. Return of rent paid for March 2013.

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.

Preliminary Issue

At the outset of the hearing, the landlord was notified that the advocate who represents the tenants was a former employee of the Residential Tenancy Branch. The landlord was informed that I have never met the advocate or had any personal dealings with the advocate.

Both parties were notified that this hearing will proceed on the merits of each application.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?
Are the tenants entitled to the return of March 2013, rent?

Background and Evidence

The parties entered into a fixed term tenancy which began on December 1, 2012, and was to expire on May 31, 2014. Rent in the amount of \$800.00 was payable on the first of each month. A security deposit of \$350.00 was paid by the tenants. The tenancy ended on February 28, 2013.

Landlord's application

The landlord testified that they did not receive the tenants notice to end the tenancy until February 1, 2013, and as a result of that the tenants are required to pay the full amount of rent for March 2013. The landlord stated that a new tenancy commenced on March 1, 2013, and the new tenants paid \$700.00, however, he should be entitled to receive an additional \$800.00 from the tenants for providing insufficient notice to end the tenancy.

The advocate stated that they had a conversation with the new tenants and were told that they paid the landlord \$800.00 for March 2013, for rent. The advocate stated that the landlord has not incurred any loss and any addition payment would be an unjust enrichment.

Tenants' application

The advocate stated the parties had entered into an agreement on February 24, 2013, which the tenants agreed to pay the landlord \$400.00, for breaking the lease. The advocate stated the tenancy agreement did not have a liquidated damages clause. The advocate stated that the agreement was based on the fact that the landlord had told the tenants that he was unable to find a new tenant for March 1, 2013, and would be suffering a loss. The advocate stated at the time of this agreement the landlord provided false information to the tenants as he had already secured a new tenant for March 1, 2013 and was to collect \$800.00 from the new tenants..

The advocate stated to allow the landlord to retain the \$400.00 would be an unjust enrichment as the landlord did not suffer a loss of rent.

The landlord testified that the agreement was that the new tenant would pay \$700.00 in rent and would get one month free rent incentive and both parties would equally share the loss. The landlord stated he did not feel that he was required to submit a copy of the new tenancy agreement to support his position.

The advocate disputes the landlord's claim of \$700.00 month rent or a rent incentive.

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, that is, a balance of probabilities.

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 each party has the burden of proof to prove their claim.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

In this case, the landlord is claiming for loss of rent for March 2013, due to insufficient notice provided by the tenants to end the tenancy. Even if I accept that the tenants breached the Act, when they ended the tenancy prior to the fixed term agreement, as the earliest date they could have legally end the tenancy was May 31, 2014. The Residential Tenancy Policy Guideline only allows the landlord to claim the difference between the two rents.

The evidence of both parties was the landlord received rent from the new tenant, however, the amount received was disputed by the parties. I find in the absent of any further evidence from the landlord, such as the new signed tenancy agreement, the landlord has failed to prove that a loss exist.

Therefore, the landlord's application is dismissed. As the landlord was not successful with their application the landlord is not entitled to recover the cost of filing the application from the tenants.

Tenants' application

The evidence of the advocate was the landlord misrepresented the agreement on February 24, 2013. The evidence was that the tenants paid the landlord \$400.00 for March 2013, rent as they believed the landlord would be suffering a loss of rent as they were told by the landlord that they were unable to find a new tenant for March 1, 2013. The evidence of the landlord was that this was to give the new tenant a rent incentive. This was denied by the tenants.

In this case, the landlord collected \$400.00 from the tenants for March 2013, rent. The landlord also collected from the new tenant rent for March 2013. While the amount of rent collected was disputed by the parties, the landlord did not file a copy of the new tenancy agreement or the rent receipt issued to the new tenant to support their position.

Under section 91 of the Act, the common law respecting landlords and tenants would apply in this case, as it would be unfair to the tenants that they paid the landlord \$400.00 for March rent, when the landlord collected rent for the same month from the new tenant.

If the landlord was allowed to retain the money paid by the tenants for March 2013, rent then the landlord would be unjustly enriched as they are only entitled to claim the difference between the two rents under a fixed term agreement. Therefore, I find the tenants are entitled to recover the rent they paid for March 2013, in the amount of **\$400.00**.

I find the tenants have established a total monetary claim of **\$450.00** comprised of the above amount and the \$50.00 fee paid for their application. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord's application is dismissed without leave to reapply.

The tenants are granted a monetary order in the above amount.

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