



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord seeking a monetary order for \$2,400.00 loss of rent for four months, due to the tenant's termination of the fixed term agreement prior to its expiry date, and an order to retain the tenant's security deposit in partial satisfaction of the claim.

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.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for rental loss due to the tenant terminating the agreement prior to the end of the fixed term tenancy?

Background and Evidence

The landlord submitted into evidence a copy of the fixed term tenancy agreement that started on August 3, 2013 with rent of \$1,200.00. The landlord testified that the suite was rented to two individuals, each of whom paid \$600.00 per month and shared the suite. The landlord testified that one of the tenants was already in the unit, when the respondent tenant agreed to join the tenancy.

The tenancy agreement in evidence, confirmed that it was signed by the landlord on August 6, 2013. It was also signed by the two individuals, as co-tenants, one of whom was the respondent tenant. However, the first co-tenant signed the agreement on August 6, 2012 and the respondent tenant did not sign the agreement until August 30, 2013.

The landlord testified that each tenant paid \$300.00 towards the \$600.00 security deposit.

The landlord testified that, although the respondent tenant signed the agreement after the landlord and the other tenant had already entered into the contract, the landlord believes that the respondent tenant is still bound by the agreement, including the fixed term.

However, according to the landlord, the original tenancy agreement was not completely ended because the landlord had permitted the other individual who signed the contract on August 6, 2012, to remain in possession of the unit and continue to reside there under the existing tenancy agreement to its conclusion, which occurred July 31, 2013.

The landlord testified that the reason he did not terminate the tenancy agreement, after the respondent co-tenant had given Notice to Vacate, was because both of the co-tenants had made representations that they would assist in finding a replacement roommate to fulfill the co-tenant role. The landlord testified that they did not honour this promise. The landlord testified that he advertised for a second co-tenant to share the unit with the original renter who had signed the agreement on August 6, 2012. The landlord said that he did not find anyone to share the unit and as a result was only able to collect half of the rent each month for the months of May, June, July and August 2013, losing \$2400.00 over this period, which is being claimed.

Copies of the landlord's advertisements dated May 15, 2013, were in evidence, showing a shared unit available immediately for rent of \$700.00 per month.

The landlord's position is that the tenant terminated his half of the tenancy before the end of the agreed-upon fixed term tenancy, and is therefore liable for half the monthly rent owed for the months of May, 2013, June 2013, July, 2013 and August 2013 for a total of \$2,400.00.

The tenant disputed the landlord's claim for the loss of rent. The tenant testified that he signed a pre-existing tenancy agreement but only consented to do so after a discussion with the landlord about the fact that the tenant could only guarantee he would be residing in the unit for at least four months, after which his continued tenancy would depend on his co-op placement. The tenant testified that he provided the landlord with the required one month notice in March and even paid rent for the full month of April despite vacating on April 20, 2013.

The tenant pointed out that the landlord's evidence confirmed that the landlord started to advertise almost month after the tenant had vacated and listed the room for the increased amount of \$700.00, instead of \$600.00. The tenant also pointed out that the

landlord was claiming rental loss for the month of August 2013, which falls beyond the fixed term expiry date of July 31, 2013, in the tenancy agreement.

Analysis

In regard to an Applicant's right to claim damages from another party, section 7 of the Act states that, if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant 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.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss 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.

In this instance, the burden of proof is on the landlord.

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement.

In this instance, I find that the dispute relates to the interpretation and enforcement of terms of the tenancy agreement. Specifically the issue pertains to losses caused by the tenant's action in terminating the tenancy agreement prior to the date shown as the expiry of the fixed term tenancy.

However, I find that there are irregularities in the manner in which this tenancy agreement was arranged. I find that the landlord had initially entered into a tenancy with one individual on August 6, 2012. However, the respondent tenant was added to the same agreement after-the-fact, on August 30, 2012. In addition, I note that the landlord

did not consider that the tenancy was ended on April 20, 2013, despite the fact that one of the co-tenants had given written Notice to vacate and moved out, which terminates the agreement under section 44(1)(d) of the Act.

The Residential Tenancy Guidelines clarify the rights and responsibilities relating to multiple tenants renting premises under one tenancy agreement. It describes a tenant as the person who has signed a tenancy agreement to rent residential premises.

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement together with the same landlord. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement including payment of the rent to the landlord sharing equal rights under the tenancy agreement.

Co-tenants are also jointly and severally liable for any unpaid rent or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord. When any one of the cotenants gives notice to end a tenancy, it ends the tenancy for all the co-tenants living in the rental unit

In this case, I find that when one of the co-tenants had given notice and vacated, the landlord permitted the tenancy to continue with the other co-tenant. I find that, although the landlord did lose a portion of the rent by accepting partial payments from the remaining co-tenant, the unit was technically not left vacant, but was still under the possession of the co-tenant with the landlord's consent.

In any case, even if I accept that this tenant was bound by the fixed term, I accept the tenant's testimony that the landlord failed to adequately mitigate the loss of rent as required under section 7 of the Act because the unit was not advertised until May 15, 2013 and the monthly rate quoted in the ad was \$100.00 higher than that paid by the tenant.

I find that the landlord was aware that the tenant would be vacating and the expectation under the Act is that the landlord must take reasonable steps to minimize the loss, by commencing advertising as soon as the tenant had given his notice. I find that the landlord advertised a higher rate for the tenancy than the amount being paid by the tenant.

I find that the landlord's claim therefore failed to satisfy element 4 of the test for damages and must be dismissed.

Given the above, I find that the landlord is not entitled to any of the damages claimed and must return the tenant's, \$300.00 security deposit.

I hereby grant the tenant a monetary order under section 38 for \$300.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is not successful in the application seeking compensation for loss of rent and the tenant is granted a monetary order for a refund to the tenant's security deposit.

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: August 14, 2013

Residential Tenancy Branch

