



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD, MNR, FF

Introduction

The hearing was to deal with the landlord's application for loss of rent due to inadequate Notice to vacate the rental unit given by the tenant to vacate and reimbursement for the cost of repairs.

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

Background and Evidence

The tenancy began on August 18, 2012 and rent was \$850.00 per month. A security deposit of \$425.00 is being held in trust.

The landlord testified that, in early July 2013, the tenant gave verbal notice to vacate to be effective mid-August 2013. The landlord testified that they told the tenant that the Act requires the tenant to give written Notice. The landlord testified that, in order to minimize their loss and to assist the tenant, they accepted that the tenant was leaving and managed to find a tenant willing to rent the unit as of August 1, 2013.

The parties both testified that the landlord then requested that the tenant move earlier than mid August. The landlord asked the tenant if they could be moved out by August

1, 2013, in order to accommodate the new renter, who apparently had agreed to take possession of the rental unit on the first day of August 2013.

Both parties testified that the tenant did accept the landlord's request and duly vacated the rental unit earlier than the tenant had intended.

The landlord testified that, after the tenant already agreed to leave earlier to accommodate the landlord's re-rental plan for August 1, 2013, the intended renter informed the landlord that they no longer wanted to rent the unit and therefore would not be moving in on August 1, 2013.

The landlord testified that they were then left with a vacancy for the month of August 2013, and suffered a loss of rent. The landlord is therefore claiming compensation for one month loss of rent from the tenant, based on the tenant's original violation of the Act in not providing adequate written Notice to terminate the tenancy. The landlord is claiming a loss of \$850.00 for August.

The tenant acknowledged that they did not give proper written notice of their intention to vacate in mid August 2013. However, the tenant pointed out that they then entered into a subsequent agreement with the landlord and moved out by August 1, 2013, at the landlord's request. The tenant stated that they consented to vacate the unit earlier than their Notice, as of August 1, 2013, instead of August 15, 2013 based on a mutual agreement with the landlord.. The tenant testified that the vacating date of August 1, 2013 was mutually agreed-upon by both of the parties and therefore was not in violation of the Act..

The tenant also pointed out that the landlord had subsequently entered into a new tenancy agreement with another party to move in on August 1, who then apparently reneged on their agreement with the landlord. The tenant's position is that the landlord's loss of rent for August was ultimately caused by the new renter breaching their agreement with the landlord by not moving in as agreed-upon.

The tenant stated that they do not agree with the landlord's claim against them for the loss of August rent, and feel that their security deposit should be refunded.

The landlord testified that the tenant had damaged a screen and the repair cost is \$25.00, which is being claimed in damages.

The tenant stated that they do not dispute this claim.

.Analysis

Landlord's Claim Loss Rent and Liquidated Damages

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 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.
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, I find that 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 or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find it clear that the landlord genuinely incurred a loss of \$850.00 of rent for August 2013. However, while this fact satisfies elements 1 and 3 of the test for damages, in order to meet the criteria for element 2, the landlord must prove that the loss was solely due to this tenant's violation of the Act or Agreement.

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 find that the tenant's failure to give one-month written Notice under the Act was clearly a violation of the Act.

However, section 44(1) (c) of the Act states that a tenancy ends if the landlord and tenant agree in writing to end the tenancy.

I find that the email communications between these parties supports the tenant's contention that, subsequent to the tenant's notice, they had both entered a new mutual agreement in which the tenant agreed to vacate the unit as of August 1, 2013, earlier than the tenant planned. The email also confirms that the landlord had apparently entered into a subsequent tenancy agreement with a new renter who was supposed to move into the unit, but later declined to fulfill that tenancy contract.

I accept the evidence before me confirming that, after the tenant's violation of the Act by not giving proper written notice, the parties then chose to enter into a subsequent agreement to mutually end the tenancy by consent, as of August 1, 2012.

I find that the terms of the subsequent agreement naturally prevail over the original tenancy agreement with this tenant.

Accordingly, I find that the landlord's loss, initially triggered by the tenant's violation, was not, in the end, caused by this tenant but resulted from the failure of the new renter to fulfill the subsequent tenancy agreement with the landlord.

Therefore, I do not find that the landlord's claim for loss of rent against the tenant would meet element 2 of the test for damages. For this reason, I find that the landlord is not entitled to the \$850.00 claimed for loss of rent and this portion of the landlord's application must be dismissed.

With respect to the landlord's claim for \$25.00 for the damaged screen, I find that the landlord is entitled to this amount. As the landlord is partly successful in the application, I find that the landlord is entitled to be reimbursed for 50% of the cost of the application, in the amount of \$25.00. The landlord's total entitlement is for \$50.00.

I hereby order that the landlord deduct \$50.00 from the \$425.00 security deposit being held on behalf of the tenant, leaving the remainder of \$375.00 to be refunded to the tenant in accordance with section 38 of the Act.

Accordingly I hereby issue a monetary order to the tenant in the amount of \$375.00. This order must be served on the landlord and may be enforced through Small Claims Court if not paid.

The remainder of the landlord's application is dismissed without leave.

Conclusion

The landlord is partly successful in the application and was granted compensation for repair costs and the remainder of the tenant's security deposit was ordered to be refunded to the tenant.

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: September 23, 2013

Residential Tenancy Branch

