



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding APARTMENTS R U
and [tenant name suppressed to protect privacy]

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, and to recover the cost of filing their application from the tenant.

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.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The tenancy began on October 15, 2012. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 and a pet damage deposit of \$475.00 were paid by the tenant. The tenancy ended on May 30, 2013. The pet damage deposit has been returned to the tenant. Filed in evidence is a rental application form.

The landlord stated that they did not receive any notice that the tenant was moving out of the rental unit until after they had vacated on May 30, 2013. The landlord stated as a result the tenant provided insufficient notice to end the tenancy. The landlord stated there was an agreement at the start of the tenancy that the unit would be reserved until June 30, 2013. Filed in evidence is an email dated October 11, 2012.

The landlord's agent stated that rental accommodation was immediately advertised on their website, for monthly, weekly or nightly use. Filed in email is an advertisement for the rental unit.

The landlord's agent stated that they were unable to rent the unit on a monthly basis due to insufficient notice, however, they were able to rent it for vacation use for three nights collecting a total of \$300.00. The landlord's agent stated that after they deducted the cleaning cost the net received was \$274.00. Filed in email is an advertisement for the rental unit.

The tenant stated that she had a verbal fixed term agreement which required her to move-out of the rental unit on May 30, 2013. The tenant stated that landlord had posted the rental unit on a website that advertised the unit as a vacation rental and June rent was posted as the high-season at a significant increase. The tenant stated that they are not responsible for cleaning costs that were the result of other occupants.

The landlord argued that the rental unit is advertised on many different websites as the unit is also used for summer vacation rentals.

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 landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

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.

In this case, the evidence of the tenant was that they had a fixed term tenancy agreement and they were required to move-out of the rental unit on May 30, 2013. The evidence of the landlord's agent was that there was a verbal agreement at the start of the tenancy that the unit was reserved for the tenant until June 30, 2013. In support of the landlord's position is an email dated October 11, 2012. The parties agreed they did not enter into a written tenancy agreement as required by the Act.

However, Under section 13 of the Act, to be a fixed term tenancy agreement, that agreement must state the date the tenancy ends and whether or not the tenancy may continue as periodic tenancy or for another fixed term date after that or if the tenant must vacated the rental unit on a date specific.

I find in the absent of a written tenancy agreement, that the tenancy was a periodic tenancy, and the tenant was required to provided the landlord with sufficient notice to end the tenancy.

Section 45 of the Residential Tenancy Act states:

45 (1) A tenant may 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

In this case, The evidence of the landlord's agent was that the tenant did not give notice to end the tenancy until after they had vacated the unit at the end of May 2013. Under section 45(1) of the Act the tenant was required to provide the landlord with at least one month notice to end the tenancy. I find that the tenant has breached the Act.

As a result of the tenant not complying with the Act the landlord suffered a loss of rent for June 2013, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7 of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss. The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring.

In this case, the evidence of the landlord's agent was that the they immediately place the rental unit on their company website for monthly, weekly and nightly rental, and was able to rent the unit for three nights collecting \$300.00. This is supported by the advertisement filed as evidence by the landlord. The evidence of the tenant was that the landlord had advertised the rental unit at the high-season rate which the monthly rent was significantly increased. This is supported by the advertisement filed as evidence by the tenant.

While there is conflicting evidence submitted by both parties as to the amount of the monthly rent that was advertised at after the tenancy ended, I find the landlord made reasonable efforts to minimize the loss, when they rented the unit on a nightly basis and was able to collect \$300.00 to offset the loss, as it was highly unlikely that the unit would have been rent for the month of June, when insufficient notice was provided.

In this case, the landlord seeks that the cleaning cost be reduced from the \$300.00 that they collected. However, I find the there is no provision under the Act, that requires a tenant to pay for cleaning cost when the rental unit is rented on a nightly basis to another occupant. I find the tenant is entitled to receive the full credit of \$300.00. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$650.00**.

I find that the landlord has established a total monetary claim of **\$700.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of **\$475.00** in partial satisfaction of the claim and I grant the landlord(s) an order under section 67 for the balance due of **\$225.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: November 5, 2103, 2013

Residential Tenancy Branch

