



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NPR GP INC(GENERAL PARTNER FOR NPR LIMITED PARTNERSHIP)
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order in respect to loss of revenue inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim. Both, the landlord and the tenant, were represented in today's hearing and each participated with their submissions, testimony and questions. The tenant did not submit document evidence, and acknowledges receiving the landlord's document evidence.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The following is undisputed by the parties. The tenancy began July 01, 2012 and effectively ended March 31, 2013 when the tenant vacated. Rent in the amount of \$1050.00 was payable in advance on the first day of each month in respect to a fixed term tenancy agreement ending June 30, 2013. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$525.00 currently held in trust. The landlord received tenant's written notice to vacate (Notice to End) on February 14, 2013 for the tenant to vacate the rental unit March 31, 2013. The parties

agree the landlord is owed \$157.50 for carpet cleaning - inclusive of tax. As goodwill, the tenant paid the landlord \$400.00 since they vacated.

The landlord seeks further rent for the balance off April 2013 and for the months of May and June 2013 – to the end of the fixed term contractual tenancy. The landlord submitted that their efforts to re-rent the subject unit for April 01, 2013 consisted of prior *general* newspaper advertisements of the availability of rental units by the landlord, and the landlord's document evidence shows that as a result of the general advertisement the landlord then offered the subject *Hillside* rental unit in subsequent communications with prospective tenants. The landlord provided that in early May 2013 they then *specifically* advertised the subject rental unit and fielded enquiries.

The tenant argued that had the landlord professionally cleaned the rental unit carpeting immediately upon the tenant vacating they would have attracted a new tenancy sooner, despite that the carpet was - according to the move out inspection - reasonably clean when the tenant vacated.

Analysis

The parties agree the tenant owes the landlord \$157.50 for carpet cleaning.

Based on the testimony of the parties, and on the preponderance of all the evidence before me, and on balance of probabilities, I find that while the Act requires that a tenant may not end a fixed term tenancy early, the Act does not attach a penalty for doing so, or automatically entitles the landlord to compensation for the remainder of the fixed term. However, Section 7 of the Act does provide as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the amount of rent in dispute is the rent amount for April, May and June 2013.

I find the evidence shows the landlord made *general* efforts to re-rent the subject unit starting in late February 2013 and then offered the subject unit as one of several in e-mails beginning in March 2013 in response to *general* collateral advertising effort enquiries. The evidence is that starting early May 2013 the landlord then *dedicated* certain advertising efforts for the subject rental unit.

I find that the landlord has succeeded in meeting the first part of the test established in section 7(1) in that they have proved that their losses resulted from the tenant's failure to comply with the Act. I further find that the landlord *generally* advertised the availability of *rental units* soon after the tenant gave Notice to End the tenancy in February 2013 certainly acting in the *spirit* of the second part of the test established in section 7(2). However, I find that the landlord did not sufficiently *dedicate* efforts to re-rent the subject unit until early May 2013 when they advertised the subject rental unit in actuality. Effectively, I find the landlord's efforts in March and April 2013 to minimize losses for the subject unit were insufficient and therefore not reasonable as prescribed by Section 7 of the Act.

I do not find the tenant's claim that the landlord did not professionally clean the carpets immediately after the tenant vacated, relevant.

As a result of all the above, I find the landlord is entitled to only certain losses of revenue. As the landlord did not prove sufficient or *dedicated* efforts to stem losses of revenue for April 2013 I dismiss this portion of the landlord's claim. As the landlord did not prove sufficient or *dedicated* efforts to stem losses of revenue until early May 2013 I grant the landlord compensation solely for the second or latter half of May 2013 in the amount of **\$525.00**. I am satisfied that the landlord has fully met the requirements of Section 7 in respect to their efforts to stem the losses of revenue for June 2013 for which I grant the landlord **\$1050.00**. The security deposit and any payments advanced by the tenant will be off-set from the award made herein.

Calculation for Monetary Order

Loss of revenue for April 2013	\$0.00
Loss of revenue for May 2013	525.00
Loss of revenue for June 2013	1050.00
Carpet cleaning	157.50
Filing Fee for the cost of this application	50.00
<i>Less payments by tenant</i>	<i>-400.00</i>
<i>Less Security Deposit held in trust</i>	<i>-525.00</i>
Total Monetary Award to landlord	\$857.50

Conclusion

I Order that the landlord retain the deposit of \$525.00 in partial satisfaction of the claim and **I grant** the landlord an Order under Section 67 of the Act for the balance due of **\$857.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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 26, 2013

Residential Tenancy Branch

