



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

While the landlord originally testified that the amount of her claim was based on the amount of rent; the filing fee for this Application; and her registered mail costs she later correct this after the tenant's testimony. The tenant indicated that the landlord had increased the rent from \$900.00 to \$938.70. The landlord then indicated that the amount of her claim only reflected the amount of rent and the filing fee.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant has submitted into evidence a copy of a tenancy agreement signed by the parties on November 30, 2010 for a month to month tenancy beginning on December 1, 2010 for a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid.

The landlord has submitted into evidence the following relevant documents:

- A copy of a handwritten notice from the tenant to the landlord dated December 2, 2012 advising the landlord of the tenant's intention to end the tenancy and vacate the rental unit on January 1, 2013; and

- A copy of an undated letter from the tenant providing the landlord with her forwarding address. The landlord has made a notation on the letter that she received the letter on November 2, 2013.

As noted above, during testimony the tenant testified the rent had been increased prior to the end of the tenancy and was \$938.70.

The tenant testified that at the time she wanted to give her notice to end the tenancy the landlord had moved out of her parents' home and when the tenant approached the landlord's parents on December 1, 2012 to advise the landlord she wanted to move out the parents told the tenant she would have to find the landlord. The tenant submits that she attempted to find the landlord but could not so she left her handwritten notice with the landlord's parents on December 2, 2012.

The landlord testified she discussed with the tenant the fact that she would be responsible for the payment of rent for January 2013 and that the tenant even offered to help the landlord find a new tenant but did not. The landlord testified she began advertising the availability of the unit as soon as she received the tenant's notice and re-rented the unit for February 1, 2013.

The parties agree a move out condition inspection was not completed. The landlord submits the tenant was gone and the tenant submits she asked to have an inspection completed but the landlord refused.

Analysis

Section 36 states that, unless the tenant has abandoned the rental unit, the right of the landlord to claim against a security deposit or a pet damage deposit or both, for damage to the residential property is extinguished if the landlord does not provide 2 opportunities for an inspection; does not participate in the inspection; or having made an inspection does not complete a condition inspection report.

I accept that a move out condition inspection was not completed. However, as the landlord's claim is for lost revenue/rent and not for damage to the rental unit or residential property the landlord has not extinguished her right to make her claim through this Application for Dispute Resolution.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

As there is no evidence before me that the landlord was in breach of a material term or that the tenant has provided a written warning to the landlord that she was in breach of a material term of the tenancy I find the tenant was required to end the tenancy in accordance with Section 45(1).

From the documentary evidence provided I find, based on the tenants notice dated December 2, 2012 the earliest effective date to end the tenancy was January 31, 2013. Even after considering the tenant's testimony that she attempted to contact the landlord on December 1, 2012 I note that rent was due, according to the tenancy agreement, on the 1st of each month and as such the tenant was required, under Section 45(1) to provide notice to be received by the landlord no later than November 30, 2012.

.As such, I find the tenant is responsible for the payment of rent for the month of January 2013 subject only to the landlord's obligation to mitigate her losses. I find, based on the landlord's undisputed testimony that she began to advertise the rental unit immediately upon receipt of the tenant's notice she took reasonable steps to mitigate the lost revenue but was unsuccessful for the month of January 2013.

Section 38(1) of the *Act* stipulates that a landlord must, within 15 days of the end of the tenancy and receipt of the tenant's forwarding address, either return the security deposit or file an Application for Dispute Resolution to claim against the security deposit. Section 38(6) stipulates that should the landlord fail to comply with Section 38(1) the landlord must pay the tenant double the security deposit.

I accept, based on the evidence and undisputed testimony of the landlord, that the landlord received the tenant's forwarding address on November 2, 2013. I note the landlord filed her Application for Dispute Resolution on November 12, 2013 and as such has complied with the requirements under Section 38(1).

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$988.70** comprised of \$938.70 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$450.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$538.70**.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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: February 28, 2014

Residential Tenancy Branch

