



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNSD, MNR, FF

Introduction

This hearing was convened in response to an application by the landlord for a monetary order for unpaid rent and loss of revenue, and to retain a portion of the security deposit in partial satisfaction of their monetary claim, and to recover the filing fee.

Both parties participated in the hearing with their submissions, document evidence and relevant testimony during the hearing. The parties were also provided with an opportunity to settle their dispute. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present.

Issue(s) to be Decided

Is the landlord entitled to a monetary order in the amount claimed?

Background and Evidence

The *relevant* undisputed testimony in this matter is that the tenancy started as a fixed term tenancy agreement May 01, 2013 with an effective end date of April 30, 2014 – although ending earlier than agreed on January 31, 2014. The parties agree that condition inspections at the start and end of the tenancy were not performed. The monthly rent payable under the tenancy agreement was \$2700.00. At the start of the tenancy the landlord collected a security deposit of \$1350.00 which the landlord retains in trust. The parties agree they exchanged e-mail communication in September 2013 in which the tenant informed the landlord that the carpeting in the rental unit may be contributing to their son's allergies although not confirmed. The tenant claims that other factors of the rental unit may have also been causing allergies although not confirmed. Regardless, as a result, on December 30, 2013 the tenant provided the landlord with a

written Notice they were ending the tenancy effective January 31, 2014. The parties agree the landlord made immediate advertising efforts to re-rent the unit for February 01, 2014, and that those efforts were not continued after the first week of January 2014 when the landlord chose to accept a new tenancy agreement effective March 05, 2014. The landlord testified they chose to accept a confirmed offer to rent for March 2014 rather than risk ongoing uncertainty. The landlord claims that the tenant's ending of the tenancy early contrary to the Act caused the landlord a loss of revenue for February and a portion of March 2014. The tenant argued the landlord did not sufficiently exploit efforts to re-rent the unit after the first week of January 2014 and claiming that had the landlord done so it would likely have resulted in a new tenancy for February 01, 2014. Therefore, the tenant disputes the landlord's claim for loss of revenue.

In addition, the parties agreed the landlord is owed \$200.00 from the tenant's security deposit for carpet cleaning.

Analysis

Under the Act, the party claiming a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test established by Section 7 of the Act, which states;

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.*

(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 relevance to this matter, the test established by Section 7 is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant (landlord) followed section 7(2) of the Act by taking *reasonable steps to mitigate or minimize the loss.*

Therefore, in this matter, the landlord bears the burden of establishing their claim on the balance of probabilities. The landlord must prove the existence of the loss in this matter, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the landlord must then provide evidence that can verify the actual monetary amount of the loss. Finally, the landlord must show that reasonable steps were taken to address the situation and to *mitigate or minimize* the loss incurred.

A tenant, who signs a fixed-term tenancy agreement, or contract, is responsible for the rent to the end of the term. And, a landlord who claims for a loss is subject to their statutory duty pursuant to Section 7(2) of the *Act* to do what *is reasonable to minimize the loss*.

All foregoing date references are 2014.

It is arguable the landlord *may* have secured a new tenant for February 01 if they had continued to advertise after January 6. And, one must accept the possibility the landlord *may* have secured a tenant for mid-February or March 01 if they had continued their efforts. Of course, in hindsight it is difficult to evaluate the result of any potential efforts, other than on a balance of probabilities. In this matter it is clear the landlord chose to mitigate losses of revenue - of potentially up to \$8100.00 to April 30 – by accepting a “sure tenancy” for March 05, rather than continuing efforts and risking not securing an earlier tenancy, or any tenancy before May 01, which as a result *may* have made the tenant responsible for a greater amount than sought by the landlord in this application.

It must be noted that the landlord’s choices in this matter ultimately *may* have acted to mitigate greater losses of revenue than currently sought. However, I find it was available to the landlord to make ongoing efforts beyond the first week of January with the aim of attracting a new tenancy starting later than February 01 if that date was not deemed achievable: for example, mid-February 2014, or March 01, 2014. On balance of probabilities, I find the landlord acted sufficiently – that is, they made reasonable efforts – to at least stem losses forecast as of February 01, by advertising early in the first week of January in order to attract a new tenant for that date. As a result, I find the landlord met the test of Section 7(2) - doing *whatever was reasonable* to mitigate losses for the period of February 01 to mid-February, and therefore I grant the landlord loss of revenue for this half month period in the amount of **\$1350.00**. However, on balance of probabilities, in the absence of additional evidence of more efforts beyond what has been presented in this matter, I find the landlord’s application for compensation for any period beyond mid-February 2014 fails, and I dismiss the balance of their claim for loss of revenue.

The evidence in this matter is that the parties agree the landlord is owed **\$200.00** for carpet cleaning, and as a result I grant this amount to the landlord.

As the landlord has been partially successful in their claim they are entitled to recovery of their **\$50.00** filing fee. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Loss of revenue	\$1350.00
Carpet cleaning	200.00
Filing Fees for the cost of this application	50.00
<i>Less security deposit held in trust</i>	<i>-1350.00</i>
Total Monetary award to landlord	\$250.00

Conclusion

I Order that the landlord retain the deposit of \$1350.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$250.00**. 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: April 08, 2014

Residential Tenancy Branch

