



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes: MND, MNR, MNSD, MNDC , FF

Introduction

This Dispute Resolution hearing was convened to deal with an application by the landlord for a monetary claim for loss of rent for two months of the fixed term, costs of cleaning and repairs and reimbursement of the filing fee.

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 and damages?

Preliminary Matter: Service of Respondent's Evidence

The tenant had submitted documentary evidence on file to dispute the landlord's claims. However, the landlord testified that the evidence was never received by the landlord. The tenant stated that they had delivered the Notice to the landlord's mail slot on April 2, 2014. The landlord denied receiving this evidence.

The tenant pointed out that the landlord responded to the tenant's evidence by submitting a later package, on April 3, 2014, rebutting the tenant's submissions and the tenant believes that this fact confirms that the landlord did receive the evidence.

If a respondent intends to dispute an Application for Dispute Resolution, Rule 4 states that copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding but if the date of the dispute resolution proceeding does not allow the five (5) day requirement in

a) to be met, then all of the respondent's evidence must be received by the Residential Tenancy Branch and served on the applicant at least two (2) days before the hearing.

Because the service is being disputed, I decline to accept or consider any evidence that was not properly served on the other party. However, I determined that verbal testimony from the tenant with respect to their documentary evidence is to be allowed and will be considered. The landlord's arguments and rebuttals against the tenant's verbal submissions will also be heard and equally considered.

Background and Evidence

The landlord testified that the tenancy began in June 2013 as a one-year fixed term with rent set at \$1,050.00 per month. The tenancy ended when the tenant vacated on September 30, 2013 and the security deposit was ordered to be refunded at a previous hearing held on the tenant's application in January 2014.

The landlord testified that the tenant gave notice to terminate the tenancy early, effective September 30, 2013, despite the fact that the tenant had committed to a fixed term. The landlord testified that advertisements to re-rent the unit were commenced immediately and the tenant was also permitted the opportunity to try and find a replacement tenant.. No copies of the ads were submitted into evidence.

However, the tenant stated that the landlord advertised the unit for a higher rent than that being paid by the tenant. The tenant testified that they found a willing renter to sublet the unit, for October 1, 2013, but the landlord declined to consider this individual's application. According to the tenant, the landlord sent them a text message stating that the landlord had already found a renter and had accepted a security deposit from someone willing to pay \$1,110.00 per month instead of the tenant's existing rate of \$1,050.00 The tenant read the landlord's response and additional texts in which the landlord apparently told the tenant that the renter would be moving in on the same day that the tenant was vacating.

The landlord denied that the text messages read by the tenant were accurate. According to the landlord, there was a renter interested, but this did not develop into a tenancy. The landlord testified that they lost 2 month's rent as the unit was vacant for October and November and are seeking compensation from the tenant for the loss.

The landlord submitted a letter from another renter dated April 1, 2014 stating that the tenant's suite was not rented from October 2013 to November 2013. This witness did not appear. The tenant argued that they knew the suite was fully rented as of October 1, 2013, because the landlord himself had told them in writing that this was the case.

The landlord did not submit any copies of correspondence or other communications with respect to the re-rental discussions. The landlord testified that they had erased all of their communications with the tenant.

The landlord stated that after the tenant vacated, despite efforts to re-rent, the landlord was not able to find a tenant to take the suite until December 2013. The landlord testified that he could not submit the tenancy agreement into evidence to confirm the date of re-rental because no formal tenancy agreement was signed with the new renter.

The landlord testified that the tenants also left the unit dirty and damaged when they vacated. The landlord acknowledged that no move-in and move-out condition inspection reports were completed, but the landlord submitted photos of the stove showing grease under the burner rings and a cracked oven door window.

The tenant denied that the unit was left dirty or damaged. The tenant pointed out that it was returned in a cleaner condition than when they arrived and they caused no damage to the stove.

Analysis:

The landlord is claiming a loss of rent of \$1,050.00 for each of the 2 months that this unit was allegedly vacant. With respect to an applicant's right to claim damages from another party, Section 7 of the Act states that, 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 and section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss 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, and
4. Proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the claimant, that being the landlord, to prove the claim.

I find that the tenant did violate the tenancy agreement by ending the tenancy prior to the expiry date of the contract.

However, I find that the landlord must prove that their losses resulted directly as a result of this violation.

I find that the tenant's testimony about what transpired near the end of September 2013 conflicts with the landlord's version of what transpired. I find that the tenant had submitted copies of text messages into evidence that could not be accepted as the landlord alleged not to have received copies of the evidence.

However, I do accept the testimony that was read into evidence by the tenant which confirms that the tenant had found a willing renter, but the landlord rejected this renter in favour of one he had already located, who was apparently willing to pay a higher rental rate.

In accepting the tenant's evidence over that of the landlord, I note that the landlord was not able to provide copies of any communications into evidence that reflected the landlord's version of events, nor did the landlord read the contents of any such communications on the topic into evidence.

Given the above, I find that the landlord has not sufficiently satisfied element 2 of the test for damages as it appears that the landlord likely succeeded in finding a replacement tenant.

In addition, the landlord must prove that reasonable steps were taken to mitigate the loss in order to satisfy element 4 of the test for damages.

I accept the testimony alleging that the rental unit was advertised at a higher rental rate and also find that the landlord failed to prove that they had properly considered the prospective renter referred by the tenant. I therefore find that the landlord failed to adequately meet the landlord's burden of proof to support the monetary claim for loss of rent. Therefore, I find that this portion of the landlord's application must be dismissed.

With respect to the landlord's claim for the costs of cleaning and repairs, I find that I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

Although the landlord has submitted photos of the unit after the tenancy ended, the tenant disputed the landlord's claims and stated that the unit was not clean nor in good

repair when the tenant took possession. The tenant disputed the landlord's claim that they left the unit dirty and in worse condition than when they moved in.

To determine whether or not the tenant had complied with section 37 of the Act, I find that this can best be established by comparing the unit's condition as it was when the tenancy began with the final condition of the unit after the tenancy ended through the submission of move-in and move-out condition inspection reports containing both party's signatures.

Conducting move-in and move out condition inspection reports are a requirement of the Act under section 23(3) and section 35 of the Act and places the obligation on the landlord to complete the condition inspection report in accordance with the regulations. Both the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, the landlord admitted that neither a move-in condition inspection report nor move-out condition inspection report was completed. I find the failure to comply with the Act and the absence of these reports has hindered the landlord's ability to prove that the tenant should be held accountable for costs of cleaning or repairs.

Given the above, I find that the landlord's monetary claim for the cleaning and repairs cost must therefore be dismissed.

Based on the testimony and evidence presented during these proceedings, I find that the landlord has not sufficiently proven that they are entitled to compensation for the loss of rent or damages for cleaning and repairs.

Accordingly, I hereby dismiss the landlord's application without leave to reapply.

Conclusion

The landlord is not successful in the application and it is dismissed without leave.

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 14, 2014

Residential Tenancy Branch

