



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

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, for damages to the unit and an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. The tenant AD attended the hearing. The tenant JR did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on or about February 14, 2014 to the tenant JR. The agent stated the tenant JR, confirmed that the documents were received as they had a phone conversation about the landlord's application.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenant JR has been duly served in accordance with the Act.

The landlord's agent and the tenant AD appeared gave affirmed testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to 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 a monetary order for money owed or compensation for loss under the Act?

Background and Evidence

The parties entered into a fixed term tenancy which began on April 1, 2013 and was to expire on March 31, 2014. Rent in the amount of \$1,200.00 was payable on the first of each month.

The landlords claims as follows:

a.	Loss of rent for February and March 2014	\$2,400.00
b.	Filing fee	\$ 50.00
	Total claimed	\$2,450.00

The landlord's agent testified that the tenants breached their fixed term agreement by vacating the premises prior to the expiry of the fixed term agreement. The landlord stated the first noticed that they received was from the co-tenant AD on January 15, 2014, informing them that she had vacated the rental premises do to the relationship with the co-tenant ending.

The landlord's agent testified that the co-tenant JR had stated that they were willing to enter into a new tenancy to take over the balance of the lease, which would release the co-tenant AD from any further obligation. However, the co-tenant JR became very difficult to contact and a new tenancy agreement was never signed.

The landlord's agent testified on February 2, 2014, he had placed a notice to enter on the rental unit door and on February 4, 2014, they discovered that the co-tenant JR had abandoned the rental unit.

The landlord's agent testified the co-tenant AD, helped as much as she could to resolve the issues but as a co-tenant she is equally responsible for the fixed term contract.

The landlord's agent testified that he advertised the rental unit before February 15, 2014, on a popular website and had about a dozen potential new renters. However, all the renters that were interested in the premises were required to give at least 30 days notice to end their existing tenancies and because of that they were not able to get a new tenant until April 1, 2014. The landlord seeks to recover loss of rent for February and March 2014.

The tenant AD testified acknowledged that they breached the fixed term agreement. The tenant AD stated she had paid her portion of rent to the co-tenant and it was his responsible to pay rent to the landlord the balance due. The tenant stated she does not dispute the claim, but hopes the landlord will pursue the tenant JR for the full amount owed.

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.

Section 45 of the Residential Tenancy Act states: fixed term

45 (2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based,

In this case, the evidence was that due to the relationship ending between the co-tenants that they both vacated the premises prior to the expiring of the fixed term tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was March 31, 2014, as stated in the tenancy agreement.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for February and March 2014, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants 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.

In this case, the evidence of the landlord's agent was that they advertised the rental premises on a popular website and had approximately a dozen potential rents. The new renters had to provide at least 30 days notice to end their current tenancies and because of this the landlord was unable to find a new tenant until April 1, 2014. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$2,400.00.**

Although the evidence of the tenant AD, was that she paid her portion of rent to the co-tenant JR, and that he did not paid rent to the landlord. That is an issue for the co-tenants to resolve between themselves.

I find that the landlord has established a total monetary claim of **\$2,450.00** comprised of the above described amount and the \$50.00 fee paid for this application. The landlord is granted a formal order pursuant to section 67 of the Act.

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 in the above amount.

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: June 02, 2014

Residential Tenancy Branch

