



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

ET, MNR, CNR MNSD, FF

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*.

The landlord applied for the following:

- An order to end the tenancy early without Notice under section 56 of the Act.
- A monetary order for rent owed pursuant to Section 67 of the Act.
- Reimbursement for the cost of the application.

The tenant applied for the following an order to cancel the Ten Day Notice to End Tenancy for Unpaid Rent.

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.

After the hearing began, the tenant advised that she had already vacated the rental unit on May 31, 2014. As the tenancy has ended, I find the issues to be determined in the tenant's application are now moot. Accordingly, the tenant's application is dismissed.

I also find that the portion of the landlord's application relating to the request for an Order of Possession is moot and need not be considered as this matter is also dismissed..

The landlord testified that he still wants to proceed with the monetary claim for rental arrears owed.

Issue to be decided

Is the landlord entitled to a monetary order for rental arrears and loss of revenue?

Background and Evidence

The tenancy began September 1, 2013 as a one-year fixed term with rent of \$900.00 per month. A \$450.00 security deposit and \$450.00 pet damage deposit had been paid.

The landlord testified that the tenant failed to pay \$900.00 rent due on May 1, 2014 and a Ten Day Notice to End Tenancy for Unpaid Rent was issued and served on the tenant on May 3, 2014.

The tenant disputed the above testimony and stated that, although the Ten Day Notice was dated May 3, 2014, it was not served on the tenant until May 11, 2014.

The landlord testified that the additional claims of \$900.00 rent for each of June and July 2014 were based on the fact that the fixed term tenancy was ended before its expiry and the possibility that they would be unable to re-rent the unit to new tenants.

Analysis:

In regard to the rental arrears, I find that section 26 of the Act states that rent must be paid when it is due under the tenancy agreement, whether or not the landlord complies with the Act, the regulations or the tenancy agreement.

If the tenant does not pay rent when it is due, the landlord can issue a Notice to End Tenancy for Unpaid Rent under section 46 of the Act. I find that the Notice was properly issued and served and that the tenant did owe rental arrears of \$900.00 when the Notice was issued.

I find that the tenant did not pay the overdue rent and remained in the unit during May 2014, but vacated by the end of May 2014. Therefore I find that the landlord is entitled to \$900.00 compensation for rental arrears owed by the tenant.

In regard to the landlord's additional claims for compensation for loss of \$1,800.00 revenue for the month of June and July 2014, I find that this claim is not considered to be rental arrears under section 26 of the Act but is a claim in damages for loss of revenue under section 67 of the Act.

Section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party must compensate the other for damage or loss that results. Section 67 of the Act grants an Arbitrator the authority to determine the amount and to order payment under these circumstances.

The party making the claim 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.

The tenant is responsible for paying rent owed while the tenant resides in the rental unit. However, to make a monetary claim for loss of revenue under the terms of the contract for a period of time the rental unit is left vacant, a landlord must satisfy all elements of the test for damages.

While I accept that the tenant did violate the Act and the tenancy agreement by failing to pay rent, thereby resulting in a termination of the contract by the landlord, I find that it was actually the *landlord* who ended this fixed term tenancy prior to its expiry date.

I find that the tenant complied with the landlord's Notice, albeit over-holding beyond the effective date of May 13, 2014, before finally vacating on May 31, 2014.

To meet element 4 of the test for damages, it must be proven by the landlord that reasonable attempts were made to minimize the landlord's losses. I find that no evidence was submitted to support that this occurred.

Given the above, I find that the landlord's damage claim for loss of revenue for June 2014 and July 2014 has not sufficiently met the test for damages and must therefore be dismissed.

I find that the landlord is entitled to total compensation of \$900.00 for rental arrears for May 2014

I therefore order that the landlord retain the tenant's security and pet damage deposits totaling \$900.00, in full satisfaction of the claim.

I hereby dismiss the remainder of the landlord's application without leave to reapply.

I hereby dismiss the tenant's application in its entirety without leave.

The portion of the landlord's application seeking compensation for loss of revenue and other damages is hereby dismissed with leave to reapply.

Each party is responsible for their own costs of their applications.

Conclusion

The tenant's application is dismissed as the Notice under dispute is now moot since the tenant vacated the unit. The landlord is partially successful in the application and is ordered to retain the tenant's security deposit in full satisfaction of the monetary claim.

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: July 03, 2014

Residential Tenancy Branch

