



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding BROWN BROS. AGENCIES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MND, MNR, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for loss of revenue, compensation for cleaning repairs and an order to keep the security deposit.

Both parties were present at the hearing. 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.

Issue(s) to be Decided

Is the landlord entitled to compensation under section 67 of the *Act* for loss of rent and damages?

Background and Evidence

The landlord testified that the fixed term tenancy began in May 2012 but the agreement was renewed and was set to expire on April 30, 2014.

Rent was set at \$1,190.00 per month and a security deposit of \$575.00 was paid. Although the fixed term tenancy was to expire on April 30, 2013, the tenant moved out at the end of March 2013.

The landlord testified that the unit was not cleaned or repaired when the tenant vacated.

The landlord seeks the following compensation:

- \$1,190.00 loss of revenue for April 2014
- \$131.25 for cleaning of the suite and yard
- \$115.50 for carpet cleaning
- \$569.10 to repair 3 broken windows

The landlord testified that as soon as they knew the tenant was vacating, they immediately commenced advertising that the suite was available and showed it to potential renters. The landlord stated that they were not successful in finding a tenant to take the unit during April 2014 and as a result suffered a loss of \$1,190.00 for which the landlord is claiming compensation.

The tenant acknowledged that they did end the tenancy prior to the expiry of the fixed term of the contract, but stated that they were forced to move due to harassment by the landlord.

The tenant testified that the landlord had only showed the unit to one party and the tenant feels the landlord did not make a reasonable attempt to re-rent the unit. The tenant stated that the landlord also made changes to the terms of the tenancy to prohibit pets and removed the on-site parking in the new tenancy agreement, which the tenant feels adversely affected the potential to re-rent the unit.

The tenant also alleged that the copy of the tenancy agreement placed in evidence by the landlord was altered by the landlord after they signed it, by adding the tenant's initials beside the term of the agreement stating that the tenant must vacate the unit at the end of the tenancy. The tenant submitted a copy of their agreement that does not feature their initials beside this particular term.

The landlord testified that the time of year impacted the rental market making it difficult to re-rent, but stated that they did practice due diligence in showing the unit to any potential renter who expressed interest. The landlord submitted a copy of a written request served on the tenants to schedule a showing.

In regard to marketing the unit, the landlord denied eliminating any services and facilities that were included in the current tenancy agreement. The landlord pointed out that, although these tenants were permitted to have a pet and park on site, the original tenancy agreement contains specific written terms that prohibit pets and that indicate there is no on-site parking included in the agreement.

With respect to the condition of the unit, the landlord testified that the unit was left by the tenant in an unclean state. In support of the claim, the landlord submitted receipts, photos and copies of the move-in and move-out condition inspection reports.

The tenant testified that the photos of the items in their shared yard did not reflect a mess left by the tenants.

The tenant acknowledged that the stove was not fully cleaned and agrees to a charge of \$25.00. However, according to the tenant, they otherwise cleaned the unit "*from top to*

bottom” before leaving, including washing the carpets. The tenant submitted a copy of a receipt for carpet cleaning.

The tenant pointed out that they indicated on the move-out condition inspection report that they did not agree with the landlord’s assessment of the unit.

With respect to the broken windows, the landlord stated that they need to be replaced as they were broken during the tenancy. The landlord was not able to provide the exact age of the windows, but believes they were possibly installed around 2001.

The tenant disputes the window repair claim and stated that one of the windows in question was already damaged when they moved in and a second window had serious condition deficiencies that affected its use. The tenant testified that the third window was damaged by a tree branch on the property during their tenancy, but they do not feel that it this liability and cost should be assigned to the tenant.

Analysis

In regard to the landlord’s claim for loss of \$1,190.00 revenue for the month of April 2014, I find that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to 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 Respondent’s 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 reasonable steps to mitigate or minimize the loss or damage.

In this instance, the burden of proof is on the landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In the case before me, I find that the tenant did violate the agreement by ending the tenancy before the expiry date and that the landlord did incur a loss of \$1,190.00 for the

month of April 2014, as a result. I further find that the landlord made a reasonable effort to find a replacement tenant by advertising the unit available on the same terms as those contained within the original agreement.

Therefore, I find that the landlord's claim for loss of revenue has met the test for damages and the landlord is entitled to be compensated the \$1,190.00 being claimed.

With respect to the claims for cleaning and repairs, I accept the tenant's testimony that they left the unit in a reasonably clean condition with the exception of the stove, for which they must compensate the landlord in the amount of \$25.00. I also accept that the landlord did not sufficiently prove that the tenants should be charged for the repairs of the broken windows.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total compensation of \$1,265.00, comprised of \$1,190.00 for loss of revenue for the month of April 2014, \$25.00 for the cleaning of the stove and the \$50.00 cost of the application.

I order that the landlord retain the tenant's \$575.00 security deposit in partial satisfaction of the claim leaving a remainder of \$690.00 still owed to the landlord.

I hereby grant the landlord a monetary order under section 67 of the Act for \$690.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remaining claims for damages are dismissed without leave.

Conclusion

The landlord is partially successful in the application and is granted a monetary order for loss of rent and some cleaning, but the landlord's claims for other damages were 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: August 14, 2014

Residential Tenancy Branch

