



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 dealt with an Application for Dispute Resolution by the landlord for an order of possession, for a monetary order for unpaid rent, and an order to retain the security deposit in partial satisfaction of the claim.

Preliminary matters

At the outset of the hearing, the landlord testified the tenant vacated the premises on May 15, 2014, and an order of possession is no longer required. The landlord stated the tenant did not provide their forwarding address in writing and does not want to have the security deposit offset any monetary award for unpaid rent as they have a claim for damages to file if and when they receive the tenant's forwarding address.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

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

The landlord testified the Application for Dispute Resolution and Notice of Hearing were served on the tenant in person on May 21, 2014, when the tenant attended the premises to pick up his mail.

I find that the tenant has been duly served in accordance with the Act.

The landlord appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

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?

Background and Evidence

The tenancy began on March 1, 2014. Rent in the amount of \$1,000.00 was payable on the first of each month. A security deposit of \$450.00 was paid by the tenant. The tenancy ended on May 15, 2014.

The landlord testified that on or about April 20, 2014, the tenant told him that he may be vacating the premises in May 2014 and that he would be using his security deposit towards rent. The landlord stated that he informed the tenant that he does not consent to the security deposit being applied to any rent. The landlord stated he also informed the tenant that if he was planning to end the tenancy then he must provide that notice to him in writing. The landlord stated he never received notice to end the tenancy in writing.

The landlord testified that the tenant then failed to pay rent for May 2014 and was served with a 10 Day Notice to End Tenancy for Unpaid Rent, issued on May 7, 2014. The landlord stated the tenant vacated the premises without pay rent for May 2014. The landlord seeks to recover unpaid rent in the amount of \$1,000.00.

The landlord testified that because he was unsure if the tenant was going to vacate the premise as the tenant did not inform him or provide him with written notice to end the tenancy that he was unable to advertise the premises. The landlord stated that as soon as the tenant vacated the premises on May 15, 2014, he immediately started to advertise the rental unit on several popular websites, however, due to short notice was unable to find a new renter for June 2014. The landlord stated a new renter was found for July 1, 2014 and the rent was also reduced. The landlord seeks to recover loss of rent for June 2014, in the amount of \$1,000.00.

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.

Unpaid rent for May 2014

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of the landlord was the tenant did not pay rent owed for May 2014. I find the tenant has breached section 26 of the Act when they failed to pay rent when due under the tenancy agreement and this has caused losses to the landlord. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$1,000.00**.

Loss of rent for June 2014

As a result of the tenant not complying with the terms of the tenancy agreement or the Act, when they failed to pay rent for May 2014 they were evicted from the rental premises. As a result of this action the landlord suffered a loss of rent for June 2014; the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant 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 tenant could have legally ended the tenancy, as this was a month-to-month tenancy the earliest time the tenant could have legally ended the tenancy was June 30, 2014.

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 undisputed evidence of the landlord was that they immediately advertised the rental premise on several popular websites and due to short notice they were unable to find a new rent for June 2014. A new renter was found for July 1, 2014 at a lower rent.

As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for June 2014 in the amount of **\$1,000.00.**

I find that the landlord has established a total monetary claim of **\$2,050.00** comprised of the above described amounts and the \$50.00 fee paid for this application. I grant the landlord an order under 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: July 10, 2014

Residential Tenancy Branch

