



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNSD,MNDC , FF

Introduction

The hearing was to deal with an application by the landlord for \$3,600.00 loss of revenue for the tenant's early termination of the fixed-term tenancy. The landlord is seeking to keep the tenant's \$900.00 security deposit in partial satisfaction of the claim.

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?

Background and Evidence

The tenancy originally began as a 3-year fixed term in September 2011 to expire on August 31, 2014.. Rent was \$1,800.00 plus 50% for utilities and a \$900.00 security deposit is being held.

At the end of March 2014, the tenant gave the landlord one month Notice to vacate, effective April 30, 2014. The landlord testified that the tenant violated the fixed term tenancy agreement by ending the tenancy before the expiry date of August 30, 2014 and the landlord seeks compensation of \$3,600.00 for loss of revenue for May and June 2014.

The tenant testified that the parties had met and both agreed that the tenancy could be ended by the tenant with one month Notice. The tenant had submitted evidence to support this allegation in the form of communications between the parties and a sworn affidavit from a witness.

The tenant testified that the landlord did not start advertising and showing the rental unit immediately after the tenant gave Notice in March and instead delayed marketing the unit until the beginning of May 2014. According to the tenant, the landlord successfully re-rented the unit in May 2014.

Analysis

An Applicant's right to claim damages from another party is dealt with under section 7 of the Act which 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 a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find it important to note that in a claim for damage or loss under the Act, 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.
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 and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that, on a balance of probabilities, the parties had likely discussed the early termination of the tenancy and may have reached an agreement that the tenant could vacate the unit with one month Notice.

However, even if the above finding is not true, I find that the landlord has not sufficiently established that they met element 4 of the test for damages by advertising the unit without delay in order to minimize their loss. I also find that the landlord has not sufficiently proven that they actually suffered a loss of revenue for the months of May and June 2014.

Given the above, I find that the landlord's claim for loss of rent has failed to meet the test for damages and must be dismissed.

As the landlord's monetary claim is dismissed, I find that the tenant is entitled to the return of the tenant's security deposit of \$900.00 currently held on their behalf.

I hereby grant a monetary order in the amount of \$900.00 in favour of the tenant. This order must be served on the respondent and if unpaid may be enforced in Small Claims Court if necessary.

The landlord's application is dismissed in its entirety without leave to reapply.

Conclusion

The landlord is unsuccessful in the application seeking monetary compensation for loss of revenue for early termination of the fixed term lease and tenant is granted a Monetary Order for the return of the tenant's security deposit.

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: September 03, 2014

Residential Tenancy Branch

