



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

Final Decision

Dispute Codes: OPR, MNR, MNSD, O, ET, FF

Introduction

This hearing was originally scheduled to deal with an Application for Dispute Resolution by the landlord for an Order of Possession, a monetary order for rent for the month of June 2014 and compensation for loss of revenue for July 2014, due to the tenant vacating the unit prior to the July 31, 2014 expiry of the fixed term tenancy agreement.

At the first hearing the landlord's claim for rent for June was determined. The remainder of the landlord's application, including loss of revenue for July 2014 was ordered to be joined with the tenant's application seeking a refund of their security deposit.

Both parties were present at the hearings. Four of the five tenants were represented by an agent. The fifth tenant did not attend. 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.

At the outset of the hearing, the landlord stated that, because the tenants already vacated the unit effective June 23, 2014, when the landlord received the key in the mail, the landlord is no longer seeking an Order of Possession. The landlord still seeks a monetary order for the rent owed for June 2014 and compensation for loss of revenue for July 2014, that was supposed to be the final month for the fixed term tenancy.

Preliminary Matter

The landlord had filed their application on June 13, 2014, and this hearing was scheduled for August 11, 2014. The landlord's claim for rental arrears for the month of June was heard, and it was found that section 26 of the Act applied to his situation.

In regard to the portion of the landlord's claim for loss of revenue for the month of July 2014, this was a claim in damages under sections 67 and 7 of the Act. I heard arguments from both the landlord and the tenant regarding the landlord's claim.

However, during the hearing the tenant advised that on May 19, 2014, they had filed their own application for dispute resolution against the landlord, seeking an order terminating the fixed term tenancy early and included a monetary claim for the return of their security deposit.

The tenant stated that they felt it necessary to terminate their tenancy early, and made the application seeking an order entitling them to do so because there were serious health issues with the unit preventing them from remaining in the rental unit until the tenancy expiry date of July 31, 2014.

The tenant's advocate testified that, a hearing is already scheduled to deal with the tenant's application. According to the parties the tenant left in mid-June 2014 and returned the keys to the landlord on June 23, 2014. Therefore the issue of loss of revenue for the month of July that would otherwise be collected from the tenant under the tenancy agreement still had to be determined in light of the tenant's application.

Rule 2.2 of the Residential Tenancy Rules of Procedure, permits an Arbitrator presiding over the hearing to join separate applications to be heard at the same time.

I hereby ordered that the second half of the dispute, that being the tenant's application of the joined files be heard with the landlord's

As the tenancy has ended, and a determination has been made that the landlord is entitled to be compensated for \$2,500.00 rent owed for the month of June 2014, the only remaining issue left to be determined is whether the tenant's early termination of the tenancy prior to the expiry of the fixed term, is justified or whether the landlord's claim for an additional award of damages in the amount of \$2,500.00 for loss of revenue for the month of July 2014 is justified.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for loss of revenue?

Background and Evidence

The tenancy began on September 1, 2013 as a fixed term tenancy for one year. The rent was \$2,500.00 and the tenants paid \$1,250.00 security deposit.

The landlord testified that they lost rent for the month of July 2014 due to the fact that the tenants breached their fixed term tenancy agreement by moving out in June 2014. The landlord testified that he did not advertise for a replacement tenant for the month of July 2014, as he had already lined up a new tenant in April 2014 with the effective date

for move in as August 1, 2014. The landlord testified that the tenants had been actively seeking people to sublet without success.

The tenant testified that the landlord was aware that they felt it necessary to vacate prior to May 23, 2014 when they made their application to obtain an order terminating the tenancy earlier than the expiry date of July 31, 2014. The tenant pointed out that all co-tenants had vacated by the end of May 2014 but left some items still on site. The tenant testified that the landlord did not make sufficient effort to re-rent the unit for July 2014.

The tenant's position is that the landlord is not entitled to claim loss of revenue for July 2014 as the landlord failed to take reasonable steps to mitigate the loss for that month.

Analysis

Based on the testimony of the landlord, pursuant to section 26 of the Act, I find that the tenant is obligated to pay rent for June 2014 in the amount of \$2,500.00.

I further find that the tenants did violate the agreement by moving out of the unit prior to the end of the fixed term.

In regard to the landlord's monetary claim for damages, I find that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a violating the Act, the regulations or the 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, the Applicant would be required to prove that the other party did not comply with the Act and that this non-compliance resulted in costs or losses to the Applicant. In a claim for damage or loss under the Act, the party claiming the damage or loss 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.

I accept the landlord's testimony that in April 2014, he had already pre-rented the unit for August 2014. I also accept the landlord's testimony that a loss of \$2,500.00 was incurred for July 2014. However, I find that the landlord did not take any steps to mitigate the loss of rent for July by seeking a tenant to take occupancy for July 2014.

For this reason, I find that the landlord has not successfully met all elements of the test for damages to justify compensation under section 67 of the Act for the loss of revenue in July 2014 and I find that this portion of the landlord's application must be dismissed.

Accordingly I find that the landlord is entitled to compensation of \$2,500.00 for rental arrears owed for the month of May 2014. I order that the landlord retain the tenant's security deposit of \$1,250.00 in partial satisfaction of the claim, leaving a balance of \$1,250.00 still outstanding.

I hereby grant the Landlord a monetary order, under section 67 of the Act, for \$2,500.00. This order must be served on the Respondent and if necessary it may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The tenant's application is dismissed as the security deposit funds are being retained by the landlord towards the monetary claim for rent for the month of June 2014. I further order that each party is responsible for the costs of their own application.

Conclusion

The landlord is partly successful in the application and is granted a monetary order for rental arrears. The request for the damages for loss of revenue is dismissed. The tenant's cross application seeking a refund of their security deposit is dismissed.

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: November 13, 2014

Residential Tenancy Branch