



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue and utilities and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on January 14, 2013 for a 1 year and 1 day fixed term tenancy beginning on February 1, 2013 for a monthly rent of \$1,650.00 due on the 1st of each month with a security deposit of \$825.00 paid. The tenancy agreement required the tenant to pay 40% of the utilities.

The landlord submits the tenant ended the tenancy earlier than the end of the fixed term when she vacated the rental unit by October 31, 2013. The landlord seeks lost revenue equivalent to 2.5 months of rent and to recover utility costs for the same period.

The landlord submits that he began advertising the rental unit's availability as soon as he was informed of the tenant's decision to vacate the unit but that he was unable to rent the unit until mid-January 2014. The tenant confirmed the landlord showed the unit to potential tenants while she was still in the rental unit.

The tenant submits that landlord had breached the tenancy agreement on several occasions throughout the tenancy and that despite repeated verbal requests the landlord failed to follow through on these items. The tenant submits that she began to lose trust in the landlord.

Finally, the landlord allowed someone to move into a back bedroom in the residential property that the tenant believed the landlord had verbally promised he would not do. She states that as result she felt her safety and security for her and her child was compromised as there was no lock between the units.

The parties agree that the landlord did install a lock between the rental unit and the back bedroom the day the landlord had someone move into the back room. The tenant noted that the lock was installed at the end of the day after the person had had full access to the tenant's rental unit for the full day.

The tenant also submits that on another occasion the landlord had had to access her unit and he had left the lock between her unit and the back room unlocked and that she did not notice for several days. She stated that she tried to work with the new arrangement but after the 16th of October she decided she could no longer stay in the unit and she began to look for a new place to live.

The tenant submits that as soon as she found a new place to move to she contacted the landlord verbally and advised him she would be vacating the rental unit. Both parties confirmed that no written notice was provided to the landlord of any breaches of material terms or of the tenant's intention of vacating the rental unit.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one

month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

While I accept that the tenant *may* have had grounds to believe that the landlord had breached a material term of the tenancy agreement I find that the tenant did not provide the landlord with any written warning of a breach of a material term of the tenancy agreement and as such, she cannot rely upon Section 45(3) to end the tenancy.

Therefore, I find the earliest the tenant could end the tenancy was the end of the fixed term and by vacating the rental unit prior to this date the tenant remains responsible for the payment of rent for the duration of the fixed term and/or until the landlord entered into a new tenancy agreement with a new tenant subject to the landlord's obligations to take reasonable steps to mitigate his losses.

Based on the landlord's undisputed testimony I find the landlord took reasonable steps to attempt to re-rent the unit and was successful in doing so effective January 15, 2014. Therefore, I find the landlord is entitled to compensation for the lost revenue he has suffered as a result of the tenant's violation of Section 45.

As to the landlord's claim for utility costs, I find the landlord despite the landlord's assertion that he could not only heat half his house or that there were some motion sensor lights that would go on during the time the unit was vacant the landlord has provided no evidence that he took steps to minimize any costs associated with the utilities.

Some actions the landlord could have taken include closing off heat registers or baseboard heating units; turning off motion sensor lights. As such, I find the landlord cannot provide sufficient evidence to establish an accurate accounting for utilities that might be attributed to the tenant.

Further, as the tenant did not have possession of the rental unit during this period I find that she cannot be held responsible for any of the associated utility costs. I therefore dismiss this portion of the landlord's claim.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$4,175.00** comprised of \$4,125.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 14, 2014

Residential Tenancy Branch

