



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for a monetary order for loss of rent, for compensation under the Act and the tenancy agreement and to recover the filing fee for the Application.

Both parties appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

Is the Landlord entitled to monetary compensation from the Tenants?

Background and Evidence

This tenancy began July 1, 2009, with the parties entering into a fixed term tenancy agreement in writing. The parties renewed the tenancy agreement each year for a fixed term, and the last term agreement was to end on June 30, 2014.

At the end of the tenancy the monthly rent was \$1,700.00, payable on the first day of the month. The Tenants had paid the Landlord a security deposit of \$797.50 in 2009; however, the security deposit issue has been dealt with in a previous hearing before a different Arbitrator.

On December 31, 2013, the Tenants wrote a letter to the Landlords stating they were ending the tenancy and the last month of the tenancy would be January 2014.

The Tenants vacated the property and the Landlord testified that they had new renters move into the rental unit on March 1, 2014.

The Landlord is now claiming for loss of rent for the month of February of 2014, in the amount of \$1,700.00; for the liquidated damages as set out in the tenancy agreement of \$500.00; for an unpaid utility bill in the amount of \$30.00; and for the filing fee for the Application of \$50.00.

The Landlord's position is that the Tenants breached the Act and tenancy agreement by ending a fixed term tenancy improperly.

The Landlord testified that they made their best efforts to rent out the after they got the notice from the Tenants. The Landlord testified that he did not advertise the rental unit as the Tenants had already done so. The Landlord explained that the Tenants put forward several names for other prospective renters to take over the lease, although the Landlord testified that everyone that approached the Landlord to take over the lease wanted to pay the same rent and have the same terms as the Tenants had in the lease.

The Landlord explained that he phoned many of the people put forward by the Tenants. The Landlord testified that he wanted the new renters to enter into a new fixed term tenancy of one year, not the remaining five months of the term, and he wanted to raise the rent as he felt it was below market value.

The Landlord testified that he did not feel the Tenants should be rewarded for their wrong doing in breaching the fixed term lease. He testified it was difficult finding someone who was willing to take over the short period left in the lease and that they did not want to pay the market value rent.

The Landlord testified that ultimately they accepted a new renter in January of 2014, for a new fixed term of one year at the rental rate of \$1,925.00, and that the new tenancy started on March 1, 2014.

The Landlord claims for the liquidated damages as set out in the tenancy agreement of \$500.00.

The Landlord also testified that the Tenants incurred a utilities bill in the amount of \$30.00, as they requested a final billing amount and this was the cost of a special reading which was charged to the Landlord.

The Tenants had the opportunity to cross examine the Landlord and asked if he had advertised the rental unit himself, and the Landlord replied that he had not, and that he left it to the Tenants.

The Tenants asked the Landlord if it was his intent to try and raise the rent to keep it vacant to charge them more money. The Landlord replied that he felt it was "sharp practice" on behalf of the Tenants to give their notice to end the tenancy on December 31, 2013, for the end of January 2014.

He explained the Tenants served him personally on December 31, 2013, at his office. He testified he did not have time to start advertising right away, as he had to deal with the other landlord in this matter (apparently a co-owner although this was not explained by the Landlord), who is elderly and in poor health.

The Tenants asked the Landlord how many prospective renters they had forwarded to the Landlord and he agreed that he had received quite a few applications to rent through referrals from the Tenants and he had to work with the elderly Landlord to prioritize these. The Tenants suggested they forwarded 30 to 40 enquiries to the Landlord and the Landlord testified that they had 6 or 7 suitable prospective renters from the ones the Tenants had suggested.

The Tenants argue that the Landlord did not act reasonably in trying to minimize the losses. The Tenants submitted evidence, in the form of email exchanges between the Landlord and themselves, that the Landlord suggested that the Tenants pay a fixed amount and waived the return of the their deposits in order to end their liability under the lease.

The Tenants have also submitted photographic evidence that on February 15, 2014, the Landlord had a painting company working at the property.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities.

Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

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 *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord took reasonable steps to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

Based on all of the above, the evidence and testimony, and on a balance of probabilities, I find as follows.

I find the Tenants have breached section 45 of the *Act* by breaching a fixed term tenancy without proper authority to do so.

Under section 45(2) of the *Act*, the Tenants were not allowed to end a fixed term tenancy prior to the end date without an order from an Arbitrator to end the tenancy, or without other authority under the *Act* to end it. I find the Tenants had no other authority under the *Act* to end the tenancy early.

Section 7 of the *Act* states:

- (1) If a landlord or tenant does not comply with this *Act*, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[Reproduced as written.]

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

[Reproduced as written.]

Based on sections 7 and 67, and all of the above, I find that the Landlord has proven that they are entitled to the liquidated damages of **\$500.00** as set out in the tenancy agreement. I do not find this amount is a penalty and I find it represents an agreed upon pre-estimate of the costs. It is a reasonable sum given the monthly rent of the rental unit and the administrative time it would take to find suitable renters. This was a clear term of the tenancy agreement and the Tenants agreed to this amount when signing this contract.

I also allow the sum of **\$30.00** for the reading of the utility bill. This was a cost incurred by the Tenants, yet charged to the Landlord. I find the Tenants had insufficient evidence that they required this charge or that they reimbursed the Landlord for it.

As to the claim for lost rent, I dismiss the Landlord's claims without leave to reapply as I find that the Landlord failed to mitigate their losses in this matter.

I find that the Tenants made more than reasonable efforts to mitigate their losses by advertising the rental unit and by actively pursuing prospective renters and passing their information along to the Landlord.

Through their efforts the Landlord was able to secure new renters within a month of the Tenants giving their notice, and I note at a higher rate of rent, and the Landlord was able to regain possession of the rental unit in order to paint prior to the new renters taking possession.

I find that the Landlord did not advertise the rental unit, and sought to have prospective renters agree to significantly different terms than what was in the tenancy agreement between these parties, such as a longer term by eight months and an increase of approximately 13% in rent.

Despite his success, in effect I find the Landlord was not offering the rental unit under the same terms in the tenancy agreement as was between the parties. I find *Policy Guideline 3, Claims for Rent and Damages for Loss of Rent*, provides a good example of what would **not** constitute mitigation:

“In all cases the landlord’s claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation...

[Reproduced as written.]

The Landlord simply vetted the proposed renters provided by the Tenants and administered their applications and entered into a new agreement, and therefore, I find that the Landlord has been adequately compensated for this under the liquidated damages clause.

Therefore, I find the Landlord has established a total monetary claim of **\$555.00** comprised of \$500.00 in liquidated damages, \$30.00 for the utility bill, and the \$25.00 towards the fee paid for this application. I have reduced the filing fee for the Application as the Landlord was only partially successful in their claims.

I grant the Landlord an order under section 67 for \$555.00. This order must be served on the Tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The Tenants ended a fixed term agreement without authority to do so under the Act or tenancy agreement. The Tenants acted reasonably in mitigating their and the Landlord’s losses. However, I find the Landlord had insufficient evidence that they mitigated their losses.

I do find the Landlord is entitled to the liquidated damages as contained in the tenancy agreement, a utility bill incurred by the Tenants yet charged to the Landlord, and to recover a portion of the filing fee for the Application.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: December 09, 2014

Residential Tenancy Branch

