



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding ACTION PROPERTY MANAGEMENT GROUOP LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Tenants' application

This matter was set for hearing by telephone conference call at 11:00 A.M on this date. The line remained open while the phone system was monitored for ten minutes and the only participant who called into the hearing during this time was the landlord. Therefore, as the tenants did not attend the hearing by 11:10 A.M, and the landlord appeared and was ready to proceed, I dismiss the tenants' application without leave to reapply.

Landlord's application

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

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

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on July 16, 2014 and successfully delivered

to the recipients on July 17, 2014, Canada post tracking receipts were provided as evidence.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Is the landlord entitled to keep all or part of the security deposit?

Background and Evidence

The tenancy began on January 17, 2014. Rent in the amount of \$1,900.00 was payable on the first of each month. A security deposit of \$950.00 was paid by the tenants.

The landlord's agent testified that on June 9, 2014, they received written notice by the tenants to end the tenancy effective July 1, 2014. The agent stated that the tenants were informed that they are providing insufficient notice to end the tenancy and could be liable to pay rent for July 2014, if a new renter was not found. Filed in evidence is a notice to vacate, dated June 9, 2014, which supports the agents testimony.

The landlord's agent testified on June 10, 2014, they commenced advertising the rental premises by placing an advertisement on a board outside the building and on a local popular website. The agent stated they had a few potential renters view the rental premises; however, they were unable to find a new renter for any portion of July 2014. The landlord seeks to recover loss of rent for July 2014, in the amount of \$1,900.00.

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-complying 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.

Section 45 of the Act states,

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
(a) is not earlier than one month after the date the landlord receives the notice,
and
(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, I accept the undisputed testimony of the landlord's agent, which is supported by the tenants' notice to vacate dated June 9, 2014, that the tenants end the tenancy effective July 1, 2014. Under section 45 of the Act the tenants were required to provide the landlord with at least one month notice to end the tenancy. I find that the tenants have breached section 45 of the Act as the earliest date they could have legally ended the tenancy was July 31, 2014.

As a result of the breach, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

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. The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, I accept that undisputed testimony of the landlord's agent that they commenced advertising the rental premises on June 10, 2014, by placing an

advertisement on a board outside the building and by placing an advertisement on a local popular website and was unable to find a new renter for any portion of July 2014.

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 July 2014, in the amount of **\$1,900.00.**

I find that the landlord has established a total monetary claim of **\$1,950.00** comprised of the above described amount and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$950.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$1,000.00.**

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Conclusion

The tenants' application is dismissed without leave to reapply.

The landlord is granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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: December 10, 2014

Residential Tenancy Branch

