



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF, O

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlords on August 20, 2014 for a Monetary Order for unpaid rent, to keep the Tenant’s security deposit, to recover the filing fee for the cost of the Application, and for ‘Other’ issues, namely a claim for lost rent and an insufficient funds fee.

Both Landlords and Tenant appeared for the hearing. However only the female Landlord provided affirmed testimony. The Tenant confirmed receipt of the Landlords’ Application by registered mail and both parties confirmed receipt of each other’s written evidence.

The parties were informed of the instructions of the proceedings and no questions were asked of the process. The parties were given a full opportunity to present their oral and written evidence, cross examine the other party, and make submissions to me.

Issue(s) to be Decided

- Are the Landlords entitled to unpaid rent and losses for August 2014 because the Tenant broke the fixed term tenancy?
- Did the Landlords take reasonable steps under the circumstances to mitigate their loss?

Background and Evidence

Both parties agreed that this tenancy for the upstairs portion of a residential home started on February 1, 2013 for a fixed term of one year due to expire on January 31, 2014. After this time period the parties amended the tenancy agreement to renew the fixed term period for another three months to end on April 30, 2014. After this fixed term period, the parties again amended the tenancy agreement to renew the fixed term

period to expire on August 31, 2014 at which point the Tenant was required to vacate the rental unit.

Rent under the fixed term tenancy agreement was payable by the Tenant in the amount of \$1,250.00 on the first day of each month. The Tenant also paid the Landlords a security deposit in the amount of \$625.00 at the start of the tenancy which the Landlords still retain.

The Landlord testified that this tenancy was a fixed term tenancy agreement that required the Tenant to vacate the rental unit at the end of August 31, 2014 and was constructed to protect both parties. However, the Tenant provided written notice to end the tenancy one month earlier than the fixed term end date. The Landlord submitted that the Tenant was not entitled to do this and a fixed term tenancy cannot be ended with the provision of a one month notice.

The Landlord explained that at the end of June 2014, the Tenant asked them to provide him with a renter's reference. The Landlord testified that they took this as an indication that the Tenant did not want to renew the tenancy. The Landlord also submitted that they also did not want to renew the tenancy agreement because they were seeking a renter for a longer one year term and the basement suite renters in the same property were having problems with the Tenant.

As a result, the Landlord had a conversation with the renters in the basement suite and indicated to them that the Tenant's tenancy would not be renewed. The basement renters indicated to the Landlord that they would like to rent the Tenant's rental suite after the Tenant's fixed term tenancy had ended. The Landlord then arranged for the basement suite renters to view the property on July 7, 2014.

The Landlord testified that in the interim time period, the Tenant verbally informed them that he would be vacating the rental suite by August 1, 2014 and not by the end of the fixed term of August 31, 2014 because he had found a new place to move to.

The Landlord testified that during the July 7, 2014 viewing with the basement renters, the Tenant had deliberately tried to disrupt the viewing by leaving clutter, mess and beers cans lying around in the rental unit. The Landlord was then provided with written notice by the Tenant for ending the tenancy. This written notice was provided in written evidence and is dated July 3, 2014. The notice explains that the Tenant will be vacating the rental suite on August 1, 2014.

The Landlord testified that she sent the Tenant an e-mail on July 8, 2014 requesting the Tenant to clean up the mess in the rental unit. The Landlord testified that she had indicated to the basement renters that the Tenant's rental suite would be available for August 1, 2014.

The Landlord explained that the basement renters were willing to move on this date but the basement renters reminded the Landlord that like the Tenant, they too were in a fixed term tenancy agreement with the Landlord that was to expire at the end of August, 2014. The Landlord testified that the basement suite renters provided her with details of potential tenants who could take over their basement suite tenancy on August 1, 2014. However, when the Landlord contacted these potential new tenants they were unable to commit to a move in date for August 1, 2014 as they had to give their landlord a one month written notice due to the short time period involved.

The Landlord explained that as a result, she agreed to a one year tenancy with the basement suite renters to begin on September 1, 2014 as she knew them and felt more comfortable continuing another tenancy with them. Therefore there was no point in advertising the rental suite for the one remaining month left in the Tenant's fixed term tenancy. The Landlord explained that if she had moved the basement suite renters to the upstairs rental suite on August 1, 2014, she would have ended up losing one month's rent for the basement suite.

The Tenant acknowledged that he had breached the Act by ending the fixed term tenancy early but testified that his main argument was that the Landlord had the basement renters available and ready to move in to his unit which he had made available for August 1, 2014. However, the Landlord prevented this from happening due to losses she would incur to another tenancy. The Tenant submits that the Landlord has failed to mitigate loss under the Act and that the Landlord's inability to find new tenants to replace the basement suite renters has no bearing on the Landlord's duty to his tenancy.

The Tenant also submitted that the Landlord had failed to advertise the rental suite and in his written notice to the Landlord dated July 3, 2014 he explained that the Landlord should make all efforts to show and rent the suite for August 1, 2014.

The Tenant testified that he had vacated the rental suite on July 30, 2014 even though he had indicated on his written notice that he would be vacating on August 1, 2014, thereby making the suite available for re-rental starting from the August 2014 period. The Tenant testified that the Landlord arranged a move out condition inspection on August 10, 2014 at which point he provided the Landlord with his forwarding address on

the condition inspection report. The Landlord explained that she had attempted to reach a settlement agreement with the Tenant regarding the loss of rent for August 2014 but no agreement was able to be reached before the deadline for making the Application to keep the Tenant's security deposit was to expire.

The Landlord explained that she was claiming for August 2014 lost rent in the amount of \$1,250.00 because the Tenant had put a stop payment on his postdated cheque. As a result, the Landlord also claims for a \$50.00 fee because the August 2014 rent cheque had bounced. The Landlord pointed to an addendum in the tenancy agreement which states that there will be a \$50.00 charge for insufficient funds cheques.

The Landlord testified that the Tenant had failed to return three keys at the end of the tenancy for which she claims \$10.00. The Tenant did not dispute the amount being charged and that he had failed to return these keys at the end of the tenancy.

The Landlord also made a monetary claim for registered mail costs incurred through this process. However, the Landlord was informed that the Act does not allow costs associated with preparation for dispute resolution to be awarded to any party. Therefore, I have not considered this portion of the Landlords' claim in my analysis below and it is dismissed without leave to re-apply.

Analysis

It was undisputed that the Tenant provided the Landlords with a forwarding address in writing on August 10, 2015 on the move out condition inspection report. The Landlords made their Application to keep the Tenant's security deposit on August 20, 2014. Therefore, in respect to the Landlords' request to keep the Tenant's security deposit, I find that the Landlords made their Application within the 15 day time limit afforded to them by Section 38(1) of the Act.

In relation to the Tenant ending the fixed term tenancy, Section 45(2) of the Act states:

A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

It was undisputed by the Tenant that he had ended the fixed term tenancy early and that this was contrary to the Act. Section 7(1) of the Act provides where a party breaches the Act, the Regulations or the tenancy agreement, the non-complying party must compensate the other party for damage or loss that results.

I find that the Landlords had put the Tenant on sufficient notice that they intended to recover the August 2014 loss of rent as they attempted to negotiate the amount of loss payable by the Tenant prior to making their Application.

As the Tenant had breached Section 45(2) of the Act, I find the Landlords would have been entitled to compensation as provided by the Act. However, Section 7(2) of the Act also states that a party making a claim for compensation for non-compliance of the Act, must do whatever is reasonable to minimise the damage or loss. Therefore, I must turn my mind to determine whether the Landlord pursued a reasonable course of action to mitigate their loss.

Although the Tenant had informed the Landlords verbally on July 3, 2014 that he was going to vacate the rental suite and make it available for re-rental on August 1, 2014, oral notice is not effective to end the tenancy agreement. However, on July 7, 2014 the Tenant did provide written notice to the Landlords to end the tenancy early effective on August 1, 2014. Therefore, this left the Landlords 24 days to advertise the suite, conduct viewings and arrange for the suite to be re-rented for August 1, 2014.

As a result, I find that this was an insufficient amount of time for the Landlords to advertise and locate new renters for the August 2014 period. Furthermore, I find that even if the Landlords had advertised the suite from July 7, 2014 onwards, it would be highly likely and probable that any new renters would not be able to occupy the rental unit until September 1, 2014, as they too would have had to give proper notice to end their tenancy, as was the case with the basement suite renters.

The Tenant seeks to put the full responsibility on the Landlords for not taking all steps to re-rent the suite including renting it to the basement suite renters. The Tenant focused his testimony on the fact that the basement renters were available to move into his suite for August 1, 2014 but the Landlord prevented them from doing so. However, I do not accept that the Landlord intentionally prevented the basement renters from moving to

the rental unit. The basement renters were not legally available to move into the rental suite on August 1, 2014 because they were in a legally binding tenancy which would have to be breached in order for them to move to the Tenant's unit. Again, this is a similar situation where a potential renter is not able to commit to a new tenancy because they have to give proper notice to end their tenancy as explained above.

Notwithstanding the Tenants arguments presented during the hearing, I find that the Tenant breached the Act by ending his fixed term tenancy early, with an unreasonable period of notice in order for the Landlords to find new renters for August 1, 2014; and that the Landlords did mitigate their loss by securing the basement renters as new tenants for the upper rental unit and by securing the new tenants for the basement suite. Therefore, I find the Landlords are entitled to August 2014 rent in the amount of **\$1,250.00**.

The Tenant did not dispute the Landlord's testimony regarding the amount claimed for lost keys which were unreturned at the end of the tenancy. Therefore, I find that the Landlord is also entitled to the **\$10.00** of compensation claimed for lost keys.

Section 44(1) (d) of the Act provides that a tenancy ends if the tenant vacates or abandons the rental unit. This does not end or eliminate a tenant's legal obligations to the tenancy agreement.

Upon review of the evidence before me I find the postdated rent cheques which were being held in trust by the Landlord were issued for the sole purpose of rent payments during a tenancy. In this case I find the Landlord was not entitled to cash the Tenant's postdated cheque dated August 1, 2014, without the Tenant's prior permission as the tenancy had ended when the Tenant vacated at the end of July 2014. Therefore, the Landlord is not entitled to compensation for the cost incurred when that cheque was returned by the bank with a stop payment. Accordingly, the claim for \$50.00 is dismissed without leave to reapply.

As the Landlords have been successful in their Application, I find they are entitled to the **\$50.00** filing fee for pursuant to Section 72(1) of the Act.

Therefore, the total amount payable by the Tenant is \$1,310.00 (\$1,250.00 + \$10.00 + \$50.00). As the Landlords already hold the Tenant's \$625.00 security deposit, I order the Landlords to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the Landlords are awarded the balance of \$685.00 (\$1,310.00 – \$625.00).

Conclusion

The Tenant has breached the Act. Therefore, I grant the Landlords a Monetary Order pursuant to Section 67 of the Act in the amount of **\$685.00**. This order must be served on the Tenant and may then be filed and enforced in the Provincial Court (Small Claims).

The Landlords are able to retain the Tenant's security deposit, in partial satisfaction of their claim.

Copies of the order are attached to the Landlords' copy of this decision.

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: February 18, 2015

Residential Tenancy Branch

