



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNR

Introduction

This Hearing was convened to consider the Landlord's Application for unpaid rent and compensation for damage or loss under the Act, regulation or tenancy agreement.

The parties gave affirmed testimony at the Hearing.

Issues to be Decided

1. Is the Landlord entitled to a monetary award in the amount of \$790.00?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. The tenancy agreement is a 3 month lease, beginning June 3, 2014, and ending August 31, 2014. The rental unit is a bedroom in the Landlord's home. The Landlord does not own the rental property; rather she is renting from her landlord and with her landlord's knowledge and consent.

The Tenant was unhappy with the living arrangements, and on June 16, 2014, he told the Landlord that he would be moving out. The Tenant found another place to live on June 17, 2014. On June 30, 2014, the Tenant signed a letter to the Landlord indicating that he would be moving out on June 30, 2014, and that he will "make the payment for the upcoming **months** up to **August 1, 2014**, when the agreement ends, or in the event that the room gets occupied before **that date**, the last month before the new tenant arrives" [my emphasis added]. A copy of the letter ("the first letter"), which is signed by both parties, was provided in evidence.

Monthly rent was \$750.00, due on the first day of each month. The Tenant paid a security deposit in the amount of \$375.00 at the beginning of the tenancy. On June 30, 2014, the Tenant signed another letter, in which the Tenant agreed that the Landlord could retain \$60.00 of the security deposit for cleaning, and \$55.00 for utilities. The

parties also agreed that the remainder of the security deposit, \$260.00, would be applied towards July's rent. A copy of this letter, which was signed by both parties, was also provided in evidence. The Tenant gave the Landlord the balance of rent for July, 2014, \$490.00, in cash.

The Landlord composed both of the June 30 letters.

The Landlord testified that she advertised for a new roommate, but that no suitable person was found for July or August, 2014. She stated that the prospective roommates who answered her ad were unemployed; took other places; didn't like the room; were smokers; had pets; or were more than one applicant. The Landlord stated that she re-rented the room effective September 1, 2014.

The Tenant's advocate submitted that there was insufficient evidence of the steps that the Landlord took to minimize her loss of revenue. She stated that the Landlord did not provide a copy of the advertisement that she placed, and no evidence of the actions the Landlord took; just documentary evidence of some of the replies she got to her ad.

The Tenant's advocate submitted that the Landlord authored the two letters dated June 30, 2014, and that the first letter was not clear with respect to what month(s) the parties had agreed the Tenant would pay rent. She stated that the Tenant understood that he would be paying rent up to and including July only and not for the month of August.

The Landlord replied that the Tenant fully understood that he was responsible for paying rent for August, if the Landlord could not find a suitable roommate for August, 2014.

The Tenant stated that he agreed to pay for July's rent, but not for August's rent.

Analysis

Before an arbitrator can make an order under Section 67 of the Act, the applicant(s) must first prove the existence of damage or loss; that it stemmed from the other party's violation of the Act, regulation, or tenancy agreement; that the monetary amount of the claim was verified; and that the applicant(s) took steps to mitigate or minimize the loss or damage. When these requirements are not satisfied, and particularly when the parties' testimonies are at odds, in the absence of other substantive independent evidence the burden of proof is not met. In this matter that burden was on the Landlord to prove her claim against the Tenant.

Section 7(1) of the Act provides in part that if a tenant does not comply with this Act, the Regulations or the tenancy agreement, the non-complying tenant must compensate the landlord for the damage or loss which results.

Section 7(2) of the Act states in part that a landlord who claims for compensation for damage must do whatever is reasonable to minimize the damage or loss.

The tenancy agreement dated June 3, 2014, indicates that the term of the agreement ended on August 31, 2014. However, I find that the subsequent agreement (the first letter of June 30, 2014) is unclear with respect to what the agreement between the parties was with respect to payment of August's rent. The letter indicates "months" rather than "month" (there was only one month (the month of July), for which rent had not been paid before August 1, 2014. The parties disagreed with respect to what the agreement was, and therefore I find that the Landlord has not met the proof of the existence of damage or loss.

In addition, I find that the Landlord did not provide sufficient evidence (for example, a copy of the ad she placed indicating the amount of rent she was seeking; or when she placed it; or how often she renewed it) to indicate that she had taken steps to minimize her loss of revenue for the month of August, 2014.

For the reasons stated above, I find that the Landlord has not provided sufficient evidence to support her claim.

Conclusion

The Landlord's application is **dismissed without leave to reapply**.

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: March 16, 2015

Residential Tenancy Branch

