



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing convened as a result of a Landlord's Application for Dispute Resolution wherein the Landlord sought the following Monetary Orders: for unpaid rent or utilities; to keep all or part of the security deposit; for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; and, to recover the filing fee.

Only the Landlord appeared at the hearing. He gave affirmed testimony and was provided the opportunity to present his evidence orally and in written and documentary form, and to make submissions to me.

The Landlord testified he served the Tenant with the Notice of Hearing and his Application on October 9, 2014 by registered mail. Under the Act documents served this way are deemed served five days later; accordingly, I find the Tenant was duly served as of October 14, 2014.

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 to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

The Landlord testified that the Tenant agreed to rent the rental unit on September 16, 2014 and provided a cash security deposit in the amount of \$500.00.

The Landlord further testified that when the Tenant agreed to rent the rental unit, he cancelled further showings. He further stated that the Tenant was supposed to attend the rental unit on September 29, 2014 in order to complete the move in Condition Inspection.

The Landlord testified that on September 21, 2014 the Tenant contacted the Landlord stated that she would not be taking the rental unit. The following day she called again and said that she *would* be taking the rental unit. The Landlord testified that on September 29, 2014 the Tenant called and stated that she would “for sure” not be taking the rental unit.

The Landlord testified that he immediately put the rental unit back on a popular internet rental site. He also stated that “word of mouth” was the primary means of advertising in this community in which the rental unit is located and accordingly he spoke to others about the available rental.

The Landlord testified that he was not able to rent the rental unit for October 1, 2014 but that it was rented as of November 1, 2014.

As the monthly rent was \$1,100.00, the Landlord sought the sum of \$1,150.00 representing the lost rent for October 2014 in addition to the \$50.00 filing fee.

Analysis

Section 1 of the Act provides as follows:

“tenancy agreement” means an agreement, whether written or oral, express or implied, between a landlord and a tenant respecting possession of a rental unit, use of common areas and services and facilities, and includes a license to occupy a rental unit.

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

While it is the case that no written tenancy agreement existed, I find that an oral tenancy was created. The fundamental elements of a binding contract are: offer; acceptance; and, consideration. In this case, the Landlord *offered* the rental unit; the Tenant *accepted* the rental unit; and the Tenant paid the security deposit of \$500.00 to the Landlord. This payment satisfies the final element or *consideration* thereby creating a valid contract.

The Landlord claims \$1,100.00 representing the amount he says they lost for rent in October 2014 and requests an Order that he be permitted to retain the security deposit of \$500.00 towards the lost rent for October 2014.

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 responding party 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.

As the Tenant provided the Landlord with only two days-notice before the beginning of October 2014, it is not surprising the Landlord was not able to rent the rental unit for October 1, 2014. I find that the loss occurred directly as a result of the Tenant's late notice. I also find that the Landlord has established that he suffered a \$500.00 loss of rent for October 2014 and that he took adequate steps to mitigate his loss.

For the above reasons, I grant the Landlord's claim for \$1,100.00. I Order, pursuant to section 38 of the *Act* that the Landlord be permitted to retain the security deposit of \$500.00. I grant the Landlord a Monetary Order for the balance due in the amount of sum of \$650.00 representing the amount owing in addition to the fee paid to file this application.

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

Conclusion

A tenancy agreement existed between the parties. The Tenant's late notice caused the Landlord to lose rental income for the month of October. The Landlord took adequate steps to minimize his loss. The Landlord is permitted to retain the \$500.00 security deposit and is granted a Monetary Order in the amount of \$650.00 representing the balance due and the fee paid to file his application.

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: May 20, 2015

Residential Tenancy Branch

