



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 dealt with an Application for Dispute Resolution by the Landlord for a Monetary Order for unpaid rent, for an Order to retain the security deposit in partial satisfaction of the claim 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.

The parties agreed that all evidence that each party provided had been exchanged. No issues with respect to service or delivery of documents or evidence were raised.

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.

Preliminary Matter

The Landlord confirmed that the Landlord's Application for Dispute Resolution contained a spelling error. Pursuant to section 64(3)(c) I amend and correct the spelling of the Landlord's corporate name in this my decision and resulting Order.

Issue to be Decided

Is the Landlord entitled to monetary compensation from the Tenant?

Background and Evidence

Introduced in evidence was a copy of the residential tenancy agreement signed by the parties March 24, 2014. This tenancy began April 1, 2014. Monthly rent was payable in the amount of \$1,400.00. On March 24, 2014 the Tenant paid a security deposit of \$700.00.

The Landlord testified that the Tenant gave written notice on September 23, 2014 indicating he and his family wished to vacate the rental unit on November 1, 2014 (the "Tenant's Notice").

The Landlord further testified that despite providing notice that he intended to move on November 1, 2014, the Tenant moved from the rental unit a month earlier on October 1, 2014.

The Landlord testified that he was not aware the Tenant intended to move before the effective date of the Tenant's Notice, and that as soon as he found out the Tenant and his family had vacated the rental unit he began advertising. He stated that he advertised on his own website as well as on popular internet websites. He testified that he was able to rent the rental unit as of November 1, 2014. The Landlord claims loss of rent for October 2014 and the filing fee.

The Landlord testified that the Tenant provided his forwarding address to the Landlord on the telephone, approximately October 1, 2014. He stated that he did not believe the Tenant had provided his forwarding address in writing as is required under section 38(1)(b) of the *Act*.

The Tenant testified that he moved from the rental unit due to a "crisis". He stated that between September 15 and September 17 he discovered that rats were present in the rental unit. He stated that he called the Landlord who in response sent a pest control company. The Tenant claimed that the rats were in his children's rooms, the walls and ceiling and that their presence made the rental unit uninhabitable.

In response to my question as to when the Tenant informed the Landlord he had moved out, the Tenant said that they were "lucky" as they were able to move into their current accommodation early and that on September 26, 2014 he moved out. He stated that he told the Landlord during a telephone call on September 25, 2014 that they were moving out by October 1, 2014.

In response to the Tenant's claims that the rental unit was uninhabitable due to the presence of rats, the Landlord stated that he exercised due diligence when the Tenant

informed him of the rats, that the pest control company dealt with the issue effectively, and that in any case the new tenants did not complain of rats once they moved in.

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 Tenant. 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.

The Landlord alleges that the Tenant, in vacating the rental unit before the effective date of the Tenant's Notice, caused Landlord's loss of rental income for the month of October 2014. The Landlord claims the loss of rent for October 2014 as well as the filing fee. The Landlord also submits that he did whatever was reasonable to minimize the damage or loss by advertising as soon as he was aware the Tenant vacated the rental unit.

The Tenant gave notice to end the tenancy in writing on September 23, 2014. He claims that two days later, namely: September 25, 2014, he called the Landlord to

inform him that they would be moving out on October 1, 2014, rather than November 1, 2014 which was the effective date of the Tenant's Notice.

Section 45 of the *Residential Tenancy Act*, deals with a notice to end tenancy issued by a Tenant and provides as follows:

Tenant's notice

- 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.
- (2) 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.
- (3) If a landlord has failed to comply with a material term of the tenancy agreement or, in relation to an assisted or supported living tenancy, of the service agreement, and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.
- (4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

The Tenant acknowledged that he moved out of the rental unit before the effective date of the Tenant's Notice. He claims however, that he should not be held responsible for the rent for October 2014 due to a "crisis".

Section 45(3) as reproduced above, provides authority for a Tenant to end a tenancy due to a material breach of the agreement by the Landlord. While not specifically articulated by the Tenant, the Tenant's submissions suggest he is attempting to argue that the Landlord, in failing to eradicate the rats from the rental unit in a timely fashion, materially breached the tenancy agreement such that the rental unit was rendered uninhabitable and rent was therefore now owing for October 2014.

The Tenant failed to introduce any evidence that he provided written notice to the Landlord as to his allegation of a material breach. As such, I find that he is not permitted to end the tenancy pursuant to section 45(3). In any event, I accept the Landlord's evidence that he exercised due diligence in attending to the rats within a reasonable period of time.

The Tenant gave notice to end the tenancy effective October 31, 2014. In vacating the rental unit before the effective date of the Tenant's Notice the Landlord was prevented from renting the rental unit for October 2014 and as such I find that the Landlord suffered a loss of rental income for the month of October 2014.

I grant the Landlord's request for monetary compensation for the month of October 2014 in the amount of \$1,400.00 as well as the \$50.00 fee paid to file his application. I Order that the Landlords retain the deposit of \$700.00 in partial satisfaction of the claim and I grant the Landlords an order under section 67 for the balance due of **\$750.00**.

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

Conclusion

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: June 4, 2015

Residential Tenancy Branch

