



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the "Act"), for a monetary order for unpaid rent, for money owed or compensation for damage or loss under the Act, and to keep all or part of the security deposit in partial satisfaction of the claim.

The landlord attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

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

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on December 29, 2014. The landlord stated that the registered mail was not returned and when they saw the tenant, the tenant confirmed they were aware of the hearing.

I find that the tenant has been duly served in accordance with the Act.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

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

Is the landlord entitled to monetary compensation for loss or damages?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on March 1, 2014 and was to expire on February 28, 2015. Rent in the amount of \$2,400.00 was payable on the first of each month. The tenant paid a security deposit of \$1,200.00 and a pet damage deposit of \$1,200.00.

The landlord claims as follows:

a.	Loss of rent from September 1 to October 9, 2014	\$ 3,040.00
b.	Recover liquidated damages	\$ 1,200.00
c.	Difference between the two rents	\$ 1,183.66

d.	Pro-rated fee of rental manger to re-lease unit	\$ 424.11
e.	Filing fee	\$ 50.00
	Total claimed	\$ 5,847.77

Loss of rent from September 1 to October 9, 2014

The landlord testified that the tenant breached the fixed term agreement as they received a letter dated July 28, 2014, ending the tenancy effective August 31, 2014. The landlord stated that the tenant was put on notice that they would be responsible for any loss of rent, should they be unable to rent the premises.

The landlord testified that on July 30, 2014, they commenced advertising the rental unit on popular websites. The landlord stated that they mitigated further as they reduced the rent from \$2,400.00 to \$2,150.00 and were able to find a new renter and there tenancy commenced on October 9, 2014. The landlord stated that they seek to recover loss of rent for September 2015 rent and prorated rent for October 2015, in the amount of \$3,040.00.

Recover liquidated damages

The landlord testified that the tenancy agreement provided a term that if the tenant ends the tenancy before the end of the original fixed term that the tenant will pay liquidated damages to covers the administration costs of re-renting the premises. The landlord stated that the tenant ended the tenancy earlier and they seek to recover liquidated damages in the amount of \$1,200.00.

Difference between the two rents

The landlord testified that the tenant's rent was \$2,400.00. The landlord stated the new renter's rent is \$2,150.00. The landlord seeks to recover the difference between the two rent in the amount of \$1,183.56.

Pro-rated fee of rental manger to re-lease unit

No evidence was required to be heard as this is considered administrative cost for re-rent the unit – liquidated damages.

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. 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-comply 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.

Loss of rent from September 1 to October 9, 2014

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice

45 (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,

...

In this case, the evidence of the landlord was that the tenant breached the fixed term tenancy by providing notice to end the tenancy with an effective vacancy date of August 31, 2015.

However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenant has breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was February 28, 2015.

However, under section 7(2) 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 the undisputed evidence of landlord that they commenced advertising the rental unit within a reasonable time. I further accept the evidence of the landlord that they lowered the rent to mitigate the loss to the tenant; a new renter was found and their tenancy commenced on October 9, 2014. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for September 2014 and prorated rent for October 2014 in the amount of **\$3,040.00**.

Recover liquidated damages

I have reviewed the tenancy agreement filed in evidence. The tenancy agreement contains a clause for liquidated damages for the administrative fee of re-rent the premises, should the tenant end the tenancy earlier than specified in the agreement. As I have found the tenant breached the Act, when they ended the tenancy on August 31, 2014, I find the landlord is entitled to recover liquidated damages. Therefore, I find the landlord is entitled to recover liquidated damages in the amount of **\$1,200.00**.

Difference between the two rents

The tenant was required to pay rent in the amount \$2,400.00 per month. The new renter is required to pay rent in the amount of \$2,150.00 per month. I find the landlord is entitled to

recover the difference over the remaining months of the original tenancy between what they would have received from the defaulting tenant and what they were able to re-rent the premises for. Therefore, the landlord is entitled to compensation in the amount of **\$1,186.66**

I find that the landlord has established a total monetary claim of **\$5,423.66** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,200.00** and pet damage deposit of **\$1,200.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,023.66**.

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

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage 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: July 20, 2015

Residential Tenancy Branch

