



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the "Application") made by the Landlord for a Monetary Order for: unpaid rent; to keep the Tenant's security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee.

The Landlord appeared for the hearing and provided affirmed testimony as well as documentary evidence prior to the hearing. There was no appearance for the Tenant during the 30 minute duration of the hearing and no submission of evidence prior to the hearing. As a result, I turned my mind to the service of the documents for this hearing by the Landlord.

The Landlord testified that she served a copy of the Application, the Notice of Hearing documents and the documentary evidence to the Tenant by registered mail on April 18, 2015. The Landlord testified that she sent this to the Tenant's forwarding address which was provided to the Landlord at the end of the tenancy in a letter. The Landlord provided the Canada Post tracking number in oral evidence to verify this method of service.

The Canada Post website indicates that the documents were received and signed for by the Tenant on May 1, 2015. Therefore, based on the undisputed evidence before me, I find the Tenant was served with the required documents pursuant to Section 89(1) (c) of the Act. The hearing continued to hear the undisputed evidence of the Landlord.

At the start of the hearing, I asked the Landlord to clarify her monetary claim. The Landlord explained that she was confused about what she could claim for. The Landlord explained that for this hearing, she was only seeking the lost rent for March and April 2015. I noted that the Landlord had increased her monetary claim to include costs associated with the breakage of the fixed term tenancy after she had mitigated her loss by re-renting it out. However, the Landlord had not increased her monetary claim for this amount by amending her Application pursuant to Rule 2.11 of the Rules of Procedure.

The Landlord explained that she was willing to abandon this portion of her claim in this hearing and that she would consider re-applying for this amount depending on the outcome. Therefore,

in this hearing I only dealt with the Landlord's loss of rent up until the rental unit had been re-rented as disclosed on the Landlord's Application and not the increased amount disclosed in the Landlord's evidence.

Issue(s) to be Decided

- Is the Landlord entitled to lost rent due to breakage of the fixed term tenancy by the Tenant before re-rental?
- Is the Landlord allowed to keep the Tenant's security deposit in partial satisfaction of the Landlord's monetary claim?

Background and Evidence

The Landlord testified that a residential tenancy agreement was signed by the Landlord and the Tenant on March 13, 2015 and March 15, 2015 respectively. The Tenant paid the Landlord a \$575.00 security deposit on March 15, 2015 to secure the tenancy.

In accordance with the agreement, the tenancy was to start on March 27, 2015 for a fixed term of one year due to expire on March 27, 2016. After this point it was intended to continue on a month to month basis. Rent in the amount of \$1,150.00 was payable on the first day of each month.

The Landlord testified that the Tenant was out of the country at the time he entered into the tenancy with the Landlord and paid the security deposit by e-transfer. The Landlord still retains the Tenant's security deposit. The Landlord confirmed that the Tenant did not view the rental unit prior to signing the tenancy agreement.

The Landlord explained that the Tenant contacted her by e-mail on March 26, 2015 informing her that he would be arriving into the country to take occupancy of the rental unit on March 27, 2015 as per the start date on the tenancy agreement. However, the Tenant did not arrive until March 28, 2015. The Landlord and Tenant met at the rental unit on March 28, 2015. The Landlord testified that they went through the rental unit together and no issues were raised by the Tenant.

The Tenant then explained to the Landlord that he was going to go shopping and get his furniture from storage and return to the rental unit to then formally collect the keys. However, the Tenant did not return. The Landlord testified that on March 30, 2015 she received an email from the Tenant who informed her that the rental unit was too small to house his furniture and that he wanted to cancel the contract effective April 1, 2015. The Tenant requested the return of his security deposit. The Landlord provided e-mail correspondence to verify her oral testimony as detailed above.

The Landlord testified that she sought information from the Residential Tenancy Branch about this situation. She then requested from the Tenant a forwarding address in a letter. The Landlord testified that the Tenant provided this in a written letter dated April 14, 2015 which was left in her mail box on April 15, 2015. As a result, the Landlord made her Application on April 17, 2015.

The Landlord testified that the Tenant then alleged that the rental unit had repairs that were required and that the Landlord had misrepresented the size of the rental unit. The Landlord confirmed that the only repair that was required to the rental unit was the repair of the bathroom door which was completed on March 28, 2015, the day the Tenant arrived to take occupancy of the rental unit. The Landlord provided an invoice to verify this repair. The Landlord denied that there were other damages to the rental unit and that she had misrepresented the size of the rental unit.

The Landlord testified that after the Tenant informed her that he was not going to honour the tenancy, she placed advertisements to re-rent the suite immediately for April 1, 2015 and then again for the middle of April 2015. The Landlord provided the advertisements into evidence. The Landlord testified that she was able to re-rent the suite for a reduced amount of rent for May 2015 and provided a copy of the new renter's tenancy agreement to verify this.

The Landlord confirmed that the Tenant had not paid any rent for March or April 2015. As a result, the Landlord now seeks prorated rent for March 27, 2015 to March 31, 2015 and loss of rent for April 2015 in the amount of **\$1,335.48** ($\$1,150.00 + ((\$1,150.00 / 31 \text{ days}) \times 5 \text{ days})$). The Landlord clarified during the hearing that she did not have a claim for physical damage to the rental unit and that the damages she wrote in the details section of her Application related to her request to keep the Tenant's security deposit which she referred to as the 'damage' deposit.

Analysis

I accept the undisputed testimony of the Landlord that she received the Tenant's forwarding address on April 15, 2015. The Landlord made the Application to keep the Tenant's security deposit on April 17, 2015. Therefore, I find the Landlord made the Application to keep the Tenant's security deposit for **unpaid and lost rent** within the 15 day time limit stipulated by Section 38(1) of the Act.

I have carefully considered the undisputed affirmed testimony and the documentary evidence of the Landlord in this decision based on the balance of probabilities as follows.

In relation to the Landlord's claim for unpaid and lost rent, a fixed term tenancy is designed to ensure that parties adhere to the agreed time period of occupancy. Section 45(2) (b) of the Act states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is **not** earlier than the date specified in the tenancy agreement as the end of the fixed term.

In addition, Sections 16 and 17 of the Act state the following:

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

17 A landlord may require, in accordance with this Act and the regulations, a tenant to pay a security deposit as a condition of entering into a tenancy agreement or as a term of a tenancy agreement.

[Reproduced as written]

Based on the foregoing, I find that the Landlord and Tenant entered into a fixed term tenancy agreement on March 15, 2015 for a tenancy to commence on March 27, 2015. Therefore, the rights and obligations pertaining to the Tenant applied and the Tenant was required to take occupancy of the rental unit and honor the tenancy.

There is no evidence before me that the Tenant had authority under the Act to break the fixed term tenancy. Neither is there evidence that the Tenant gave the Landlord an opportunity to correct alleged repair issues, which is a requirement under Section 45(3) of the Act before a fixed term tenancy can be ended by a tenant. I find that the Tenant had the opportunity and would have been obligated to view or have an agent view the rental unit on his behalf before entering into a tenancy with the Landlord for the rental unit. Therefore, I find the Tenant breached the Act by not paying any rent for the rental unit and ending the tenancy contrary to the tenancy agreement and to the provisions of the Act.

A landlord may make a claim for a tenant's security deposit for unpaid or lost rent. The issue of whether a landlord completes a condition inspection report is not relevant to such a claim. It is only relevant when a landlord makes a claim for the security deposit in relation to damages to the rental unit. The Landlord indicates in the details section of her Application a claim for damages in the amount of \$575.00. However, during the hearing, the Landlord clarified that this amount was in relation to the claim of the security deposit and not physical damages to the rental unit.

Section 7(2) of the Act requires that a party making a claim for compensation must do whatever is reasonable to minimize the damage or loss. I am satisfied by the Landlord's undisputed evidence that she attempted to mitigate her loss by re-renting the suite for the earliest time possible. I accept the convincing evidence that the Landlord was not able to re-rent the suite for April 2015.

Therefore, I find the Landlord is entitled to unpaid rent for the five days pertaining to March 2015 rent which was payable under the agreement, as well as the loss of April 2015 rent. This results in a total amount of **\$1,335.48**. As the Landlord has been successful in this matter, the Landlord

is also entitled to recover the **\$50.00** Application filing fee pursuant to Section 72(1) of the Act. Therefore, the total amount payable by the Tenant to the Landlord is **\$1,385.48**.

As the Landlord already holds **\$575.00** in the Tenant's security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$810.48**. Copies of this order are attached to the Landlord's copy of this decision. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment in accordance with the Landlord's instructions.

Conclusion

The Tenant broke the fixed term tenancy contrary to the Act. Therefore, the Landlord may keep the Tenant's security deposit and is issued with a Monetary Order for the remaining amount of \$810.48.

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: September 22, 2015

Residential Tenancy Branch

