



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 dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord; her witness and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue; for costs associated with filing her claim; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on May 11, 2014 for an 11 month and 1 day fixed term tenancy beginning on June 1, 2014 for a monthly rent of \$1,850.00 due on the 1st of each month with a security deposit of \$925.00. The parties acknowledge the tenants began living in the rental unit since August 31, 2012.

The tenants ended the tenancy prior to the end of the fixed term in the agreement signed on May 11, 2014. The landlord seeks compensation for lost revenue for the month of April 2015 in the amount of \$1,850.00 and \$78.56 for the cost of stationary; photographs; and registered mail associated with filing her claim.

The tenants submit that they ended the tenancy for breach of a material term of the tenancy agreement and are therefore not obligated to pay rent until the end of the fixed term. The tenants also submit that even if the landlord did suffer loss she failed to take sufficient steps to mitigate any losses and should not be compensated as a result.

The parties agree that in early December 2014 the tenants identified to the landlord that there was a leak of some kind in the utility room. Both parties provided submissions

regarding the time line of events related to the reporting and landlord's response to the reports. Both parties submitted into evidence a substantial volume of email correspondence relating to these issues.

The tenants also submit that when the landlord attended the rental unit on December 10, 2014 to investigate the utility room they reported to the landlord that there was also evidence of a water problem in the living room that was dismissed by the landlord as the result of a previous leak.

The tenants submit that by December 27, 2014 the leak in the utility room had worsened and they emailed the landlord, who was out of the country. They state they also contacted the landlord's emergency contact person on December 28, 2014 but that he responded by saying the landlord would deal with it when she returned on January 4, 2015.

The landlord submits that she did not receive the email sent by the tenants on December 27, 2014 until she returned home on January 11, 2015. The tenants confirmed that the repairs to the utility room were completed on January 14, 2015 but that the tools that were borrowed from the tenants; the washer and dryer were left in the middle of the room and no clean up or drying was done. Following these events the parties confirmed that the landlord had contacted roofers and that the roof repairs had been completed in January 22, 2015 but that the tenants themselves cleaned and dried the interior areas.

On January 14, 2015 the tenants provided the landlord with an email stating they had purchased a house and they would like to have their vacancy date to leave the rental unit as April 1, 2015. The landlord submits that she responded by advising the tenants they would be responsible for the tenancy until the end of the fixed term.

The landlord submitted into evidence a copy of a letter from the tenants dated February 27, 2015 that is entitled: "Notice to End Lease Tenancy Agreement Due to Breach of Material Terms" [reproduced as written]. This notice states the last day of the tenancy will be March 31, 2015 and identifies three issues:

1. Failure to identify the source and repair a water leak in a timely manner;
2. Failure to identify and repair water leak to roof until January 22, 2015; and
3. Landlord's unavailability and failure of her agent to take action to address an increase in the leak in the utility room.

The tenants confirmed, in their testimony, that there was no other communication to the landlord identifying a breach of a material term. This notice also provided the landlord with the tenants' forwarding address for the return of their security deposit.

The tenants submit that the landlord intended to complete some repairs to the rental unit that would require the unit to be vacant. They submit that it is unlikely that anyone would want to rent a place that was undergoing major renovations.

The tenants refer to email correspondence between the parties from February 11, 2015 where the tenants advise the landlord that they have seen her advertisements for the unit stating the availability of the unit on May 1, 2015. They submit the landlord had not intended to rent the unit again until May 1, 2015.

The tenants provided copies of several website advertisements for the rental unit. Several of the ads showed availability of the unit to be April 15, 2015 or May 1, 2015 and she was seeking \$1,950.00 per month. One ad indicated the unit was available as of March 15 or April 1, 2015.

The landlord testified that she re-rented the unit effective May 1, 2015.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any and if appropriate, to mitigate the damage or loss.

In regard to the landlord's claim for compensation for costs for stationary; photographs; and registered mail associated with this Application, I find these are choices the landlord has made to pursue a claim against the tenants and are as such not recoverable costs pursuant to the *Act*. I dismiss this portion of the landlord's claim.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy 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.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

The Residential Tenancy Branch website provides specific instructions on how to provide a notice to end a tenancy where the tenants believe the landlord has breached a material term. It states: "Before ending a tenancy for breach of a material term, a tenant must provide a "breach letter" to the landlord that states:

- What the problem is and why it's a breach of a material term of the tenancy agreement:
- The reasonable deadline that the problem must be fixed by: and
- If the problem isn't fixed by the deadline, the tenant will end the tenancy.

From the landlord's evidence I find that the tenants' "Notice to End Lease Tenancy Agreement Due to Breach of Material Terms" [reproduces as written] does not identify which term or terms of the tenancy agreement are breached or a deadline for the landlord to correct the breach. Instead the "Notice" simply advises the landlord the tenants are ending their tenancy.

I also note that by the time the tenants wrote the breach letter the repairs to rental unit had been completed and if the tenants felt they suffered a loss as a result of any delays in making required repairs the tenants could have either sought an order from the Residential Tenancy Branch to complete emergency repairs; taken on the repairs themselves (to be reimbursed from the landlord at a later date); or sought monetary compensation for the landlord failing to make repairs.

In addition, the tenant had provided the landlord with a notice of their intent to end the tenancy in January 2015 stating they wanted to end the tenancy because they had bought a house. I also note that the landlord had already advised the tenants that she expected rent to be paid until the end of the fixed term. I find, on a balance of probabilities, the tenants were seeking all ways of ending the tenancy early.

As such, I find the tenants did not have authority under Section 45(3) to end the tenancy as the result of breach of a material term of the tenancy and they are responsible for the payment of rent for the month of April 2015, subject to the landlord's obligation to mitigate any losses.

As noted above, when making a claim for losses from a tenancy the party making the claim must take reasonable steps to mitigate the losses. From the submissions of the tenants, I find the landlord had advertised the availability of the rental unit as being between April 15, 2015 and May 1, 2015. I accept that the landlord had intended to complete some repairs to the unit prior to re-renting the unit out.

I also accept the tenants' submissions that the work anticipated would have not have been conducive to starting a tenancy when the work was underway. If the tenancy had gone through to the full fixed term and the landlord completed these repairs she would have simply lost any revenue for that period of time.

However, I find it would be unreasonable for the landlord to re-rent the unit for a period of only 1 month; end that tenancy; and then complete repairs to the rental unit simply to mitigate losses. As such, I find it was not necessary, in the circumstances before me for the landlord to re-rent the unit prior to the advertised time of April 15, 2015. Therefore, I find the landlord took reasonable steps to mitigate her loss.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,900.00** comprised of \$1,850.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$925.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$975.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 11, 2015

Residential Tenancy Branch

