



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

MNR, MND, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent, for compensation for monetary loss or other money owed and to recover the filing fee from the tenant.

Both parties appeared, gave 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 at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions

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 money owed?

Background and Evidence

The parties entered into a fixed term tenancy which began on October 1, 2015 and was to expire on September 30, 2015. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenant.

The landlord testified that towards the end of May 2015, they informed the tenant that they were going to place the apartment up for sale. The landlord stated they informed the tenant that there was no hurry for the tenant to vacate.

The landlord testified that the tenant then gave notice to end the tenancy. The landlord stated that the tenant was not entitled to end the tenancy as they were under a fixed term agreement until September 30, 2016. The landlord stated they put the tenant on notice that they would be responsible for any loss of revenue.

The landlord testified that they advertised the rental unit on several popular websites; however, they were unable to find a new renter for July 2016. The landlord stated that they thought maybe having the apartment listed for sale was scaring off potential tenants, so they cancelled the listing. The landlord stated that they were able to find a new renter commencing August 1, 2015.

The tenant testified that when they informed the landlord that they would start looking for new rental accommodation the landlord never told them that they would be responsible for any loss rent. The tenant stated that when the landlord gave them notice that they would seek compensation for loss, it was after they had entered into a new tenancy agreement.

The landlord responded that they did not immediately respond as they were making efforts to determine what, if any recourse they had as there was no need for the tenant to end the tenancy.

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-complying 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.

Section 45 of the Residential Tenancy Act states: (fixed term)

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 on June 30, 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. The tenant is responsible to know their rights and obligations under the Act before ending a fixed term agreement.

I find the tenant has breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy was September 30, 2015 as stated in the tenancy agreement.

Since the tenant did not comply with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for July 2015, the landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

However, under section 7 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.

In this case, the landlord had listed the property for sale during the tenancy. The landlord advertised the rental unit on several popular websites within a reasonable amount of time after the tenant gave notice. The landlord was unable to find a new rent for July 2016. The landlord further removed the sales listing for the property to attract a new renter. I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$950.00.**

I find that the landlord has established a total monetary claim of **\$1,000.00** comprised of the above described amount and the \$50.00 fee paid for this application.

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 in the above amount.

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: August 24, 2016

Residential Tenancy Branch