



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PROSPERO INTERNATIONAL REALTY INC.
and [tenant name suppressed to protect privacy]

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 an order to retain the security deposit in partial satisfaction of the claim.

The landlord's agent attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

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

The landlord's agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on December 23, 2017, Canada post tracking numbers were provided as evidence of service.

Section 90 of the Act determines that a document served in this manner is deemed to have been served five days later. I find that the tenants have been duly served in accordance with the Act.

The landlord's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to 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 retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a fixed term tenancy which began on November 22, 2016 and was to expire on May 31, 2017. Rent in the amount of \$2,395.00 was payable on the first of each month. The tenants paid a security deposit of \$1,198.00. The tenancy ended on December 12, 2016.

The landlord's agent testified that the tenants paid their rent in advance up to and including March 2017. The agent stated that the tenants breached the tenancy agreement by vacated the premises prior to the expiry of the fixed term agreement. The agent stated that as soon as notice was given to end the tenancy they immediately listed the property for rent. The agent stated they have not found a new renter for January 2017.

The landlord's agent testified that the also seek to recover liquidated damage of \$275.00 as listed in the tenancy agreement.

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.

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's agent was that the tenants breached the fixed term tenancy by ending the tenancy on December 12, 2016. However, under the

Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was May 31, 2017, as stated in the tenancy agreement.

As I have found the tenant has breached the Act, I find the landlord is entitled to recover the liquidated damages as specified in the tenancy agreement in the amount of **\$275.00**.

Since the tenants failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the 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(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, the evidence of the landlord's agent was that they immediately advertised the rental premises; however, could not find a new renter for January 2017, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for January 2017, in the amount of **\$2,395.00**.

In this case, the landlord's application seeks to retain the advance payments of rent for February 2017 and March 2017. However, I find the landlord's application premature as February 2017 and March 2017, rent is not due and owing and I am not satisfied they have meet their duties to under section 7(2) of the Act to mitigate. Therefore, I find it appropriate to dismiss this portion of their claim with leave to reapply.

I find that the landlord has established a total monetary claim of **\$3,045.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

In this case, the landlord currently holds \$7,185.00 in advance rent payments and the security deposit of \$1,198.00 for a total amount of \$8,386.00. I authorize the landlord to retain the amount of \$3,045.00 from the above balance in full satisfaction of this award. I find the landlord is to return the balance due to the tenants in the amount of **\$5,431.00**. I grant the tenants a monetary order should the landlord fail to comply with my order.

Conclusion

The landlord is granted a monetary order and may keep a portion of the above mentioned monies in full satisfaction of the claim. The balance held by the landlord is to be returned to the tenants. The landlord is at liberty to apply for further loss of revenue.

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: January 20, 2017

Residential Tenancy Branch