



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and compensation for loss pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide sworn testimony, to present evidence and to make submissions.

Issues

Is the landlord entitled to a monetary award for unpaid rent and loss?

Is the landlord entitled to retain the tenant's security deposit?

Is the landlord entitled to recover the filing fee?

Background & Evidence

The tenancy began on April 1, 2016 and was for a fixed term of one year ending on March 31, 2017. The monthly rent was \$1000.00. The tenants paid a security deposit of \$500.00 at the start of the tenancy which the landlord continues to retain.

By way of a letter dated October 14, 2016, the tenant advised the homeowners that she would be ending the tenancy early on October 31, 2016. In this letter, the tenant included a mutual agreement to end tenancy which was not accepted or signed by the landlord. The tenant vacated the rental unit on October 30, 2016.

The landlord is claiming loss of rent for the month of November 2016 in the amount of \$1000.00. The landlord's agent testified that she was notified by the homeowners on October 30, 2016 that the tenant was breaking the fixed term lease early. The landlord's agent testified that the property was relisted and the landlord was able to secure a tenant for December 1, 2016. The landlord is also claiming \$500.00 in liquidated damages as set out in clause 5 of the tenancy agreement. The landlord testified the liquidated damages are to cover all costs associated with re-renting the rental unit.

The tenant testified that she notified the landlord with her intention to break the lease by way of a letter dated October 14, 2016 and e-mail evidence submitted on file supports that the landlord was aware of her intention at least as of October 20, 2016. The tenant testified that due to the low vacancy rate she is surprised that the landlord was not able to secure a new tenant until December 1, 2016. The tenant submits she also made attempts to mitigate any losses by having the landlord agree to a mutual agreement to end tenancy. The tenant further submits that the reasons for her ending the tenancy early was due to the landlord losing one of her rent cheques in a previous month and subsequently being threatened with evictions or law suits from the landlord.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8, Unconscionable and Material Terms, provides the following guidance:

In order to end a tenancy for a breach of a material term, the party alleging the breach must inform the other party in writing of the following:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find the tenant has failed to establish that the tenancy was ended due to a material breach of the tenancy agreement. A lost rent cheque or threat of eviction or a lawsuit is not a material breach of the tenancy agreement.

I accept the landlord's testimony and find the landlord attempted to mitigate its losses by re-renting the rental unit as soon as possible. This is evident by the fact the landlord was able to secure a new tenant as early as December 1, 2016. The tenant's testimony that the landlord should have been able to re-rent sooner given the low vacancy rate is only speculation. I find given the short notice to end the tenancy, it is reasonable the landlord was not able to secure a new tenant any sooner. I fail to see how the tenants' claim that she attempted to mitigate any losses through a mutual agreement to end tenancy would mitigate any losses or be of any benefit to the landlord.

I accept the landlords claim for unpaid rent in the amount of **\$1000.00** for the month of November 2016.

The tenancy agreement signed by the parties stipulates the landlord may require the tenant to pay a sum of \$500.00 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term. The clause also stipulates that payment of liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated.

A liquidated damages clause is a clause in a tenancy agreement where the parties agree in advance to the damages payable in the event of a breach of the tenancy agreement. The amount agreed to must be a genuine pre-estimate of the loss at the time the contract is entered into, otherwise the clause may be held to constitute a penalty and as a result will be unenforceable.

In this case, the liquidated damages clause is intended to compensate the landlord for losses resulting from the costs of re-renting the rental unit after a tenant breach. I find the amount of \$500.00 as being a reasonable pre-estimate of the loss in order to compensate the landlord for any administrative costs incurred in re-renting the unit. I find this amount is not extravagant and does not constitute a penalty.

I accept the landlord's claim of **\$500.00** in liquidated damages.

As the landlord was successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application from the tenant for a total monetary award of **\$1600.00**.

The landlord continues to hold a security deposit in the amount of \$500.00. I allow the landlord to retain the security deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

The landlord is entitled to a monetary order in the amount of **\$1,100.00**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$1,100.00**. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: May 15, 2017

Residential Tenancy Branch