



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR 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 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 her filing fee for this application from the tenant 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 affirmed testimony, to present evidence and to make submissions.

Issues

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

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background & Evidence

This one year fixed term tenancy began on June 5, 2016 and was set to expire on May 31, 2017. The monthly rent was \$2800.00. On November 5, 2016 the tenant advised the landlord that she would need to break the lease early due to financial reasons. The tenant vacated the rental unit on December 31, 2016. The tenant paid a security deposit of \$1400.00 and a pet deposit of \$1400.00 at the start of the tenancy which the landlord continues to hold. A forwarding address was provided by the tenant during a move out condition inspection report completed on December 31, 2016. The landlord made an application for dispute resolution claiming against the security deposit within

15 days of receiving the forwarding address. As per the condition inspection report, the tenant agreed in writing for the landlord to retain \$700.00 of the security deposit for liquidated damages for the cost of re-renting the rental unit. As per the tenancy agreement and move-out inspection report, the landlord retained the right to claim for loss of rent until the unit was re-rented.

The landlord is claiming they were not able to re-rent the unit until April 1, 2017 and is therefore claiming loss of rent for the months of January, February and March 2017 in the amount of \$8400.00 plus a \$25.00 NSF charge for the January 2017 cheque. The landlord submitted leasing reports which show the number of units available and the dates of occupancy. The landlord also submitted traffic reports which show the tenant's unit had a total of 58 inquiries from various advertisements placed during the period of November 21, 2016 to March 18, 2017. The landlord also submitted a copy of the new tenancy agreement effective April 1, 2017 at a monthly rent of \$3000.00.

The landlord is also claiming unpaid utilities bills for the period of January 4, 2017 to March 23, 2017 as the landlord was required to re-activate the utilities in the landlords name while the unit sat vacant.

The tenant submits that she advised the landlord on November 5, 2017 that she had to break the lease due to financial reasons. The tenant further testified that when she returned to the rental property to inquire about her damage deposit in the 3rd week of January 2017 she noticed a general contractor on site doing repairs to the rental unit. It is the tenant's belief the landlord was doing a full renovation but she provided no proof of such. She returned one week later and the general contractor was still there.

The landlord did not dispute the tenant's allegation that work was being done at the rental unit. The landlord did not have any information available before her as to the extent of the work that was required and completed.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the *Act*, *Regulation* or tenancy agreement;

3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
4. Proof that the applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

There is no dispute that the tenant was in violation of the tenancy agreement by breaking the fixed term lease early. I also accept the landlord's evidence that the rental unit was advertised beginning in the week of November 21, 2016 and up to March 18, 2017. I also accept the landlord's evidence that the rental unit was not re-rented until April 1, 2017. However, I am not satisfied on a balance of probabilities that the loss was solely as a result of the tenant's breach of the fixed term lease and that the landlord took reasonable steps to mitigate or minimize the loss. I make this finding as the evidence shows the landlord actually re-rented the rental unit at a monthly rate of \$3000.00 which is a 7.14% increase from the fixed term lease. If the landlord was taking steps to mitigate any losses, one would expect that, if anything, the landlord would reduce the rent in an attempt to get the unit re-rented. Further, the landlord did not submit sufficient evidence to support when the rental was available for occupancy. The landlord did not submit any copies of advertisements showing the rental unit was available January 1, 2017. On a balance of probabilities, I accept the tenant's testimony that work was being performed on the rental unit, which may have contributed to the landlord's inability to re-rent the rental unit. The landlord did not dispute that work was being done on the rental unit.

I find that if the landlord had taken reasonable steps to mitigate losses the landlord may have been able to re-rent the rental unit for January 1, 2017 given the landlord was notified on November 5, 2017 and started to advertise on November 21, 2017. As a result, I dismiss the landlord's claim in its entirety without leave to reapply.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

The landlord is entitled to retain \$700.00 from the security deposit as agreed to by the tenant in writing. The landlord is ordered to return to the tenant the balance of the security deposit and pet deposit in the sum of \$2100.00.

The tenant is granted a Monetary Order in the amount of \$2100.00.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenant a Monetary Order in the amount of \$2100.00. Should the landlord 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: July 05, 2017

Residential Tenancy Branch