



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for compensation for loss of rent, for an order to retain the security deposit in partial satisfaction of the claim 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 monetary compensation for loss of 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 that began on June 1, 2016 and was to expire on May 31, 2017. Rent in the amount of \$1,400.00 was payable on the first of each month. The tenant paid a security deposit of \$700.00.

At the outset of the hearing the landlord stated that they are reducing their claim by removing April and May rent as they were able to find a new renter.

The landlord claims as follows:

a.	Loss of rent for January, February and March 2017	\$4,200.00
b.	Filing fee	\$ 100.00
	Total claimed	\$4,300.00

The landlord testified that the tenant breached the fixed term tenancy agreement by vacating the rental unit on October 1, 2016. The landlord stated the tenant informed them that they would be moving back into their house.

The landlord testified that they mitigated their loss by advertising the rental unit for rent on several popular websites, for the same rent; however, were unable to find a suitable tenant. The landlord stated that they then lowered the rent by \$50.00 per month and found a new renter commencing April 1, 2017.

The tenant testified that they believe that it took the landlord far too long to rent the premise, as the vacancy rate is very low. The tenant stated that they compensated the landlord with three months of rent. The tenant stated that they were not going to pay rent when their own home was available and they were not going to rent their house, as they did not intend to become a landlord.

The landlord responded that their property is harder to rent, as they operate a business out of the bottom portion and there is a large fishpond that is not safe for families with children.

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.

Section 45 of the Residential Tenancy Act states:

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 both parties was the tenant ended the tenancy when they vacated the rental unit on October 1, 2016. I find the tenant breached the Act as the earliest dated the tenant could have legally ended the tenancy was the date specified in the tenancy agreement.

Because of the tenant not complying with the terms of the tenancy agreement or the Act the landlord suffered a loss of rent for January, February and March 2017 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.

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 undisputed evidence of the landlord was they immediately advertised the rental unit and they were unable to find a new renter. The evidence of the landlord was they lowered the rent by \$50.00 and were able to find a new renter for April 2017.

As a result, I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent in the amount of **\$4,200.00**.

I find that the landlord has established a total monetary claim of **\$4,300.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit and interest of \$700.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of **\$3,600.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The tenant is cautioned that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlord is granted a monetary and may keep the security deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

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 06, 2017

Residential Tenancy Branch