



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement pursuant to section 67;
- a monetary order for unpaid rent pursuant to section 67;

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. There were no issues raised with respect to the service of the application and evidence.

At the outset of the hearing, the landlord advised she was withdrawing her application for compensation for damage to the rental unit.

Issues

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

Background & Evidence

The rental unit is the top floor of a residential house. The landlord is not the owner of the unit but rather is herself a tenant who subleases the rental unit every winter through the Airbnb website. The tenants booked the rental unit through the Airbnb website for a 3 month period. The parties also signed a 3 month fixed term residential tenancy agreement. The lease was to end on March 15, 2017. The monthly rent was \$2650.00 payable on the 1st of each month. Less than 50% of the monthly rent was paid through the Airbnb website and the balance was paid directly to the landlord via Interac e-transfer. This arrangement was to avoid high fees through Airbnb. The tenants paid a security deposit of \$1650.00 at the start of the tenancy which was also paid through the Airbnb website. The security deposit has not been returned to the tenant and it would

be up to the tenant to apply for the security deposit through Airbnb. The landlord testified she prefers the deposit to be paid through Airbnb as it provides her with additional insurance coverages. She testified that Airbnb insurance covered all the damage to the rental unit which is why she has withdrawn that portion of her claim. On February 2, 2017 the tenants notified the landlord that they would need to vacate the rental unit prior to the expiry of the fixed term. The tenants vacated the rental unit on February 7, 2017 and paid the landlord rent for the first 2 weeks of February 2017.

The landlord is claiming unpaid rent for the balance of February 2017 in the prorated amount of \$1865.00 plus unpaid rent for March 1-15, 2017 in the amount of \$1290.00. The landlord submits she was not able to find another tenant given the short notice even though she made attempts to do such. The landlord testified that as she had extended her vacation due to the tenants requesting a 3 month lease she was out of the country at the time of the breaking of the lease so this made it more difficult to re-rent. She was originally only intending to rent the unit for 1 month but extended to 3 months at the tenants request. She also argues that as the balance of the rental period was from February 15 to March 15, 2017 it was difficult to rent as most people prefer to rent from the 1st of the month.

The tenants argue that as the unit was rented through Airbnb this matter is outside the jurisdiction of the Act. The tenant testified he did not feel he had the ability to sublet the rental unit or he could have found someone to sublet the remainder of the lease to. The tenant argues that 2 weeks' notice should be sufficient for this short 3 month lease. In addition, he argues they vacated the rental unit early even though they paid rent for first 2 weeks of February so it would be easier for the landlord to re-rent.

Analysis

Section 4 of the Act excludes from the Act living accommodation occupied for vacation or travel. Although Airbnb is commonly utilized to book vacation or travel accommodation, I find the tenants did not submit sufficient evidence in support of their argument that the Act should not apply to this arrangement. The tenants did not present any evidence that the accommodation was for vacation or travel purposes. I find that this agreement was a short term rental for living accommodations which is covered under the Act.

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.

Section 34 of the Act requires that a tenant must not assign a tenancy agreement or sublet a rental unit without the landlord's written consent. Only in the case of a fixed term tenancy of 6 months or more, the landlord must not reasonably withhold consent.

I find the tenants ended the fixed term lease prior to the end of the fixed term and as such the landlord suffered a loss. The Act only requires that a landlord not reasonably withhold consent in the case of a fixed term of more than 6 months. As such, the landlord was not required to consent to the subletting of the rental unit as this tenancy agreement was only for a 3 month term.

I accept the landlord's claim for loss in the amount of \$3155.00. I accept the landlord's testimony that she made arrangements to extend her vacation plans in order to accommodate the tenants request for a 3 month lease agreement. I find that given the landlord was out of the country she was not in a position to mitigate her losses by moving back into the rental unit or re-rent the unit on such short notice for the balance of the lease term.

The landlord is entitled to a monetary order in the amount of \$3,155.00.

Conclusion

Pursuant to section 67 of the Act, I grant the landlord a Monetary Order in the amount of **\$3,155.00**. Should the tenants 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: August 21, 2017

Residential Tenancy Branch