



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing was convened by way of conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for a Monetary Order for unpaid rent, and to recover the filing fee from the Tenant.

Both parties appeared for the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Application by registered mail and both parties confirmed the exchange of their documentary evidence prior to the hearing.

The hearing process was explained and no questions as to how the proceedings would be conducted were raised. The parties were given a full opportunity to provide evidence, make submissions to me, and to cross examine the other party on the relevant evidence given in the hearing.

Issue(s) to be Decided

Is the Landlord entitled to loss of rent for March 2017?

Background and Evidence

The parties confirmed that this tenancy started on September 1, 2016 on a fixed term basis which was set to end on August 31, 2017. Rent under the signed tenancy agreement was payable in the amount of \$2,500.00 on the 1st day of each month.

The parties confirmed that on January 24, 2017 the Tenant was served with a 1 Month Notice to End Tenancy for Cause (the "1 Month Notice") by registered mail. The Tenant disputed the 1 Month Notice and a dispute resolution hearing was scheduled for March 1, 2017 for an Arbitrator to determine whether the tenancy would end. The file number for that hearing is detailed on the front page of this Decision.

The Landlord testified that when she received the Tenant's application to dispute the 1 Month Notice, the details of dispute section on that application was ambiguous as the Tenant wrote in part "*We are seeking to over turn this eviction, but do not wish to stay in the rental home, as we feel unsafe...*"

The Landlord submitted that the Tenant's application was unclear as to whether the Tenant was still going to pursue the 1 Month Notice or whether she was going to be moving out. Therefore, the Landlord was not able to take any steps to re-rent the rental unit to mitigate loss.

The Landlord explained that her legal counsel then wrote a letter to the Tenant dated February 14, 2017 informing of the ambiguous nature of the Tenant's application. In that same letter, which was served to the Tenant by email, legal counsel for the Landlord provided an offer to settle the dispute. The letter was provided into evidence and states in part:

"...in exchange for your written agreement to move out of the unit and provide our client with vacant possession on or before February 28, 2017 (as it seems you intend to do in any event), our client will withdraw her Notice to End Tenancy for cause, and will provide you with the sum of \$500.00 as a one-time contribution toward your moving expenses. In exchange for all of this, all of the parties (i.e.: our client, as landlord, and the both of you, as tenants) will execute an amended tenancy agreement confirming that it expires effective February 28, 2017 (allowing you to avoid a claim for damages for the unpaid balance of the fixed term of the lease), and the parties will execute a mutual full and final release of all claims, including but not limited to all claims made by you in [File Number for March 1, 2017 hearing]."

[Reproduced as written]

The Landlord explained that the Tenant then responded to the email letter on February 16, 2017 in which she rejected the offer. Therefore, the Landlord had no choice but to proceed with the March 1, 2017 hearing not knowing whether the Tenant was going to appear at the hearing and argue to have the 1 Month Notice cancelled. The Landlord submitted that the Tenant failed to also withdraw or cancel the hearing which would have then allowed the Landlord to start the process of re-rental.

The Landlord stated the Tenant then abandoned the rental unit at some point during the end of February 28, 2017. Therefore, this did not give the Landlord sufficient time to re-rent the rental unit for March 2017. The Landlord testified that the rental unit was however re-rented for April 2017. As a result, the Landlord now seeks loss of rent from the Tenant in the amount of \$2,500.00 for March 2017.

The Tenant rejected the Landlord's claim and stated that she had emailed the Landlord on February 16, 2017 and made it very clear in several parts that the rental unit was going to be vacated at the end of February 2017.

The Tenant referred to that email provided into evidence which states in part “...we must exit the premises by February 28, and we intend to do so...We have been very clear about our moving date”. The Tenant stated that the Landlord was informed in that same response that they would no longer be living at the rental unit because they had been evicted and that they would be leaving on February 28, 2017. The Tenant testified that the rental unit was vacated prior to February 28, 2017.

The Tenant stated that she had not withdrawn the 1 Month Notice because the Landlord's allegations were so serious in nature that they needed to be disproved. The Tenant stated that if she did not disprove the allegations she feared it would have gone down on record that she had accepted they were valid and admitted guilt.

The Tenant stated that it was only in the March 1, 2017 hearing did she realise, after being informed by that Arbitrator, that she did not need to proceed with her application to cancel the 1 Month Notice as it was moot because she had since moved out.

The Tenant confirmed that while she had not given the Landlord anything in writing, other than the February 16, 2017 email, this was sufficient to have put the Landlord on notice that the tenancy was going to end. The Tenant stated that the Landlord's Application came as a shock to her as the Landlord had not mentioned anything about loss of rent and even gave back the security deposit at the end of the tenancy.

The Landlord rejected the Tenant's testimony and stated that she is entitled to make a claim from two years from the end of the tenancy. The Landlord pointed out that she had filed the claim shortly after she was able to re-rent the rental unit for April 2017 rent loss. The Landlord asserted that up until the Tenant vacated the rental unit, she was unsure whether the Tenant was still going to argue the 1 Month Notice at the March 1, 2017 hearing.

Analysis

I have carefully considered the evidence of both parties in this case and I have decided to grant the Landlord's Application for the following reasons.

Firstly, I agree that when the Tenant filed to dispute the 1 Month Notice, the Tenant's application was ambiguous in nature. The Tenant's application did not make it clear whether the Tenant intended to move out or was going to proceed to argue and have the 1 Month Notice cancelled. Certainly, I find the very fact the Tenant filed her application was sufficient to indicate the 1 Month Notice remained unproven and was still (a) subject to cancellation through arbitration, and (b) the tenancy was still liable for continuation.

Secondly, I find that when the Tenant was asked by legal counsel to confirm her position on the ending of the tenancy in the February 14, 2017 letter, this corroborates the Landlord's testimony that she was unsure about the Tenant's position with respect to the ending of the tenancy.

I find the letter served by the Landlord's legal counsel made it very clear that the offer made was to end the tenancy by mutual agreement and hinged on the Tenant's consent to withdraw the 1 Month Notice. However, as the Tenant rejected that offer, I find that this again left the impression that the 1 Month Notice was still under dispute. If the tenancy had been ended by mutual agreement, this would have barred any claim of rent loss by the Landlord.

While I find the Tenant did state multiple times in her response to legal counsel's letter that she was going to be vacating the rental unit at the end of February 28, 2017, I concur with the Landlord and find that as the offer was rejected and there was no withdrawal of the 1 Month Notice, this again caused ambiguity and prevented the Landlord from mitigating loss by starting the process of re-rental.

Thirdly, I find that even if the Tenant had given a clear indication to the Landlord that the Tenant was going to vacate the rental unit pursuant to the 1 Month Notice and the 1 Month Notice was withdrawn with the consent of the parties, the Tenant would still be liable for any loss incurred by the Landlord due to the premature ending of the fixed term tenancy. This would not have been the case if there had been a mutual agreement to end the tenancy or if the Landlord had waived her right to make a claim for loss of rent as had been proposed to the Tenant in the letter from the Landlord's legal counsel. It should also be noted that neither a landlord nor tenant may end a fixed term tenancy, unless it is done pursuant to the Act, such as the issuing of a 1 Month Notice. Section 45(2) of the Act prohibits a tenant from serving a one month notice to end a fixed term tenancy early.

I find that when the Tenant vacated the rental unit at the end of February 2017, this did not give the Landlord sufficient time to re-rent the rental unit and mitigate the loss for the remainder of the fixed term tenancy. I accept the Landlord's evidence that the rental unit was re-rented for April 2017. Therefore, the Landlord mitigated loss for the fixed term tenancy and incurred only one month's rent as loss.

Lastly, I find the circumstances of the above events did put the Tenant on notice of a claim for lost rent. This is because in the letter compiled by the Landlord's legal counsel,

the Tenant was warned that failure to accept the offer and mutually agree to end the tenancy would not avoid any claim by the Landlord for loss of rent. As the Tenant rejected that offer, I find this was sufficient to put the Tenant on notice that she was liable to lost rent.

In addition, I find the Landlord filed the Application on April 19, 2017 and that this was done shortly after the loss of the fixed term had been remedied by re-rental on April 1, 2017. Accordingly, the Landlord is granted the loss of rent for March 2017 in the amount of \$2,500.00.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenant the \$100.00 filing fee for the cost of filing the Application. Therefore, the Landlord is granted a Monetary Order for a total amount of \$2,600.00. This order must be served to the Tenant and may then be enforced in the Small Claims Division of the Provincial Court as an order of that court if the Tenant fails to make payment.

The Tenant may also be held liable for any enforcement costs incurred by the Landlord.

Copies of the Monetary Order for service and enforcement are attached to the Landlord's copy of this Decision.

Conclusion

The Landlord has proved loss of rent for March 2017. The Landlord is therefore granted a Monetary Order for \$2,600.00 inclusive of the filing fee.

This Decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Residential Tenancy Branch

Dated: September 21, 2017