



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 was convened as a result of the landlord's Application for Dispute Resolution (the "Application") seeking remedy under the *Residential Tenancy Act* (the "Act"). The landlord applied for a monetary order for unpaid rent or utilities, to retain all or part of the tenant's security deposit, and to recover the cost of the filing fee.

The landlord and the tenant attended the teleconference hearing. The hearing process was explained to the parties and an opportunity to ask questions about the hearing process was provided to the parties.

The tenant confirmed that they received and had the opportunity to review the landlord's documentary evidence prior to the hearing. The tenant confirmed that they did not serve any documentary evidence on the landlord in response to the landlord's Application.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenant's security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on July 27, 2016 and was scheduled to end on July 26, 2017. The parties confirmed that the tenant moved out of the rental unit on May 1, 2017. The monthly rent was \$1,950.00 per month and due on the first day of each month. The tenant paid the landlord a \$1,000.00 security deposit which the landlord stated he has \$610.32 of and is seeking authority to retain.

The landlord's monetary claim of \$5,000.00 was not broken down in the landlord's application and the landlord failed to provide a monetary order worksheet. The landlord stated that his first item was for \$610.32 for the tenant breaching the no smoking and no pet rules, \$1,000.00 for item 2 for compensation for loss of work, and for item 3; \$1,950.00 in loss of rent for each of the months of May, June and July of 2017. The landlord confirmed that new tenants moved into the rental unit as of August 1, 2017.

The landlord was advised that their monetary claim was limited to \$5,000.00 and as a result, I would not be considering items 1 and 2 for two reasons. Firstly, the landlord failed to set out the amounts in advance so I find the tenant would be prejudiced with proceeding with an amount that was not properly set out in advance of the hearing. Secondly, item 3, the loss of May, June and July 2017 rent totals \$5,850.00 which already exceeds what I find to be the maximum monetary claim of \$5,000.00 which is what the landlord applied for and served on the tenant. As a result, I dismiss items 1 and 2 without leave to reapply due to insufficient particulars and note that item 2 is not something the landlord would be entitled to regardless as this dispute is related to a residential tenancy and not a commercial tenancy.

Regarding item 3, the landlord testified that the tenant provided written notice that they would be vacating the rental unit. The parties were uncertain on the date the written notice was provided. The landlord is seeking the loss of rent for May, June and July 2017. The landlord testified that he did not advertise the rental unit to secure new tenants until July 2017.

Analysis

Based on the testimony of the parties provided during the hearing, the documentary evidence and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;

3. The value of the loss; and,
4. That the party making the application did what was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenant. Once that has been established, the landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlord did what was reasonable to minimize the damage or losses that were incurred.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

As indicated above, items 1 and 2 were dismissed without leave to reapply due to insufficient particulars as required by the *Act*.

Regarding item 3, the landlord has claimed \$5,850.00 comprised of \$1,950.00 for loss of May, June and July 2017 inclusive. The parties did not dispute that the tenant provided a written notice to end the tenancy in April 2017. Based on the above, I find that section 45(2) of the *Act* applies and states:

Tenant's notice

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, that rent is payable under the tenancy agreement.

[My emphasis added]

Based on the above, I find the tenant breached section 45(2) of the *Act* as the tenant was not entitled to breach the fixed term tenancy by vacating early and that without a written mutual agreement to end the tenancy, the earliest the tenant could have vacated without penalty was July 26, 2017. Section 7 of the *Act* also applies and states:

Liability for not complying with this Act or a tenancy agreement

7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[My emphasis added]

Based on the landlord's testimony which I find confirms the landlord did not attempt to re-rent the rental unit until July 2017, I find the landlord is only entitled to loss of May 2017 rent in the amount of **\$1,950.00** as I find the landlord failed to comply with section 7 of the *Act* for the months of June and July 2017 by not advertising the rental unit until July 2017. Therefore, I find the landlord has met the burden of proof for May 2017 only and I grant the landlord **\$1,950.00** for loss of May 2017 rent and I dismiss the remainder of item 3.

As the landlord's application had merit, I grant the landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

I find that the landlord has established a total monetary claim in the amount of **\$2,050.00** comprised of \$1,950.00 for item 3, plus \$100.00 for recovery of the cost of the filing fee.

As the landlord has claimed against the tenant's security deposit balance of \$610.32 which has accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenant's full \$610.32 security deposit balance in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order under section 67 for the balance owing by tenant to the landlord in the amount of **\$1,439.68**.

Conclusion

The landlord's application is partially successful.

The landlord has established a total monetary claim in the amount of \$2,050.00 as described above. The landlord has been authorized to retain the tenant's \$610.32 security deposit balance in partial satisfaction of the landlord's monetary claim. The

landlord has also been granted a monetary order under section 67 for the balance owing by tenant to the landlord in the amount of \$1,439.68. Should the landlord require enforcement of the monetary order, the monetary order must first be served on the tenant and the order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 18, 2017

Residential Tenancy Branch