



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

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;
- authorization to recover his filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties agreed that the landlord served the tenant with the notice of hearing package via Canada Post Registered Mail on May 10, 2017 and again on May 13, 2017 with the submitted documentary evidence. The tenant stated that no documentary evidence was submitted in response. I accept the undisputed evidence of both parties and find that both parties have been properly served as per sections 88 and 89 of the Act.

At the outset, the landlord stated that he was not seeking an order for recovery of the filing fee. As such, the hearing shall proceed only on the landlord's monetary claim of \$500.00 for money owed or compensation.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss?

Background and Evidence

While I have turned my mind to all the documentary evidence, and the testimony of the parties, not all details of the respective submissions and / or arguments are reproduced here. The principal aspects of the applicant's claim and my findings are set out below.

Both parties agreed that this tenancy ended on May 31, 2017 as a result of a mutual agreement to end the tenancy early as per the landlord's submitted copy of the agreement dated April 30, 2017. A copy of the signed tenancy agreement states that this tenancy began on July 1, 2015

on a month-to-month basis and that the monthly rent was \$1,700.00 payable on the 1st day of each month.

The landlord seeks a monetary claim of \$500.00 as compensation for the landlord in ending the tenancy early for the loss of rental income as per a signed agreement.

The agreement states in part,

If M. is not able to find someone to rent by June 2015, J. agrees to forfeit \$500 of his damage deposit for loss of rent due to the early end of the lease.

[Reproduced as written]

The landlord claims that the rental premises was not re-rented in time for June 2015 and as such, suffered a loss of rental income.

The tenant confirmed that this was the agreement made with the landlord, but disputes that if this agreement were enforced the tenant would be paying an additional penalty as 6 days of rent totalling, \$330.00 for June 2015 for the tenant overholding the rental premises. The tenant argued that as such he would be paying twice.

The tenant argued that the landlord failed to mitigate any possible losses by re-renting the premises to the first available applicant. The landlord disputed this arguing that he had re-rented to the first suitable applicant and that applicant was not available until July 2015.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

I accept the undisputed affirmed evidence of both parties that a mutual agreement was made for the tenant to forfeit \$500.00 from the security deposit if the landlord was unable to re-rent the premises for June 2015 as per section 38 (4) (a) of the *Act*. Both parties agreed that the landlord was unable to re-rent the premises, although the tenant argues that the landlord failed to mitigate by re-renting the premises to the first available applicant.

Residential Tenancy Branch Policy Guideline #5 states in part,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided.

The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring...

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.

As such, I find based upon the affirmed testimony of both parties that the landlord made reasonable efforts to re-rent the premises and minimize any possible losses. As such, the landlord has established a claim for \$500.00.

Conclusion

The landlord is granted a monetary order for \$500.00.

This order must be served upon the tenant. Should the tenant fail to comply with the order, the 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: October 11, 2017

Residential Tenancy Branch