



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB MND MNDC MNR FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for: an Order of Possession pursuant to section 55; a monetary order for unpaid rent, damage or loss from this tenancy pursuant to section 67; and authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their testimony, and to make submissions. The tenant acknowledged receipt of the landlord's Application for Dispute Resolution and evidence package. The landlord acknowledged receipt of the tenant's evidence package. Therefore, I find that all materials were sufficiently served in accordance with the requirements of the Act.

At the outset of the hearing, the landlord withdrew his application for an Order of Possession explaining that the tenants had vacated the rental unit at the end of March 2017. The landlord proceeded with his application for a monetary order for unpaid rent, damage and rental loss as well as recovery of the filing fee.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, damage or loss from this tenancy? Is the landlord entitled to recover the filing fee for this application?

Background and Evidence

This tenancy began February 1, 2017 as a 6 month fixed term tenancy scheduled to end on July 31, 2017. The rental amount of \$3500.00 was payable on the first of each month. The tenant(s) vacated the rental unit on or about the March 31, 2017. The landlord returned the tenant's \$1750.00 security deposit. The landlord testified that he believes the tenants are required to compensate him for rental loss as well as damage to the rental unit.

The landlord testified that he was unable to re-rent the rental unit when the tenants vacated the rental unit and therefore he suffered rental loss of 2 months (April 2017 and May 2017). He testified that he made attempts to re-rent the unit but that he was not able to do so until June 2017. He submitted that, as the tenants had agreed in writing to stay in the rental unit until July 31, 2017, they should be responsible for the 2 months' rent when he was unable to re-rent the unit.

The tenants and their advocate argued that all issues related to a tenancy were ended when the security deposit was returned to the tenants by the landlord and that he is not entitled to collect from the tenants any longer. They testified that he is simply trying to get further money from the tenants.

The landlord testified that the rental unit has an excessive amount of damage when the tenants vacated the rental unit. He testified that the tenants didn't really clean the unit at the end of the tenancy. He testified that he does not have a receipt for cleaning services as he did most of it himself. The landlord submitted a copy of a condition inspection form. The form had been completed at the outset of the tenancy however the form had not been completed at the end of the tenancy. The landlord submitted a photograph of scratches on the rental unit floor.

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 (in this case, the landlord) bears the burden of proof.

The landlord must prove the existence of the damage/loss. I find that the landlord has not proven damage and loss as a result of this tenancy. The move-out condition inspection report is neither complete nor signed by the tenant. Therefore, I am unable to rely on the accuracy of the report in assessing the condition of the unit. Furthermore, the landlord did not provide clear evidence regarding the provision of opportunities to tenant to attend the condition inspection at move-out.

The landlord must prove that the damage/loss stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Again, the condition inspection report is the best evidence to support a landlord's claim for damage to the unit, according to Residential Tenancy Regulation No. 21 as laid out below.

Evidentiary weight of a condition inspection report

- 21** In dispute resolution proceedings, a condition inspection report completed in accordance with this Part is evidence of the state of repair and condition of the rental

unit or residential property on the date of the inspection, unless either the landlord or the tenant has a preponderance of evidence to the contrary.

The landlord must also provide evidence that can verify the actual monetary amount of the loss/damage. I find that the landlord has not provided evidence in the form of receipts for cleaning or damage repair that I can rely on in considering if the landlord is entitled to compensation. As the landlord has not provided evidence to verify his loss in relation to damage to the rental unit, I find that the landlord is not entitled to compensation for damage to the unit.

I find that the landlord has proven that the tenant vacated the rental unit without sufficient notice and prior to the end of the fixed term. I accept the testimony of the landlord, supported by the documentary evidence that the tenant(s) provided notice that they would vacate on March 31, 2017 and that they vacated on that date but that his tenancy was not scheduled to expire until July 31, 2017 (4 months prior to the end of the fixed term).

I also accept the evidence of the landlord that he attempted to re-rent the unit and advertised as soon as the tenants vacated the rental unit. I accept his testimony that he felt it necessary to wait until the tenant(s) vacated the rental unit before he could advertise the rental unit again. I accept the landlord's evidence that he re-rented for June 1, 2017 and therefore suffered rental loss for 2 months: April 2017 and May 2017. I find that the landlord mitigated the loss by re-renting the unit but that he lost \$7000.00 as a result of the 2 months without a tenant in April 2017 and May 2017. Therefore, **I find that the landlord is entitled to recover \$5500.00** – the total amount he sought at this hearing. I note that I cannot award an amount larger than the amount sought by the applicant.

I find that the landlord has proven that the lack of notice by the tenant and his end of the tenancy prior to the agreed upon expiry date of the fixed term tenancy prevented the landlord from renting the unit immediately after the tenant(s) vacated the premises. I accept the evidence of the landlord that he made efforts to re-rent and that, because of those efforts, the landlord was able to re-rent the unit as of June 1, 2017.

I find that the tenant(s) was clearly subject to a fixed term tenancy agreement. Given that this tenancy was scheduled to expire in July 2017 and the tenant vacated the rental unit approximately 4 months prior to the end of the fixed term, I find that the landlord has proven he experienced financial loss and administrative costs as a result of the tenants vacating the rental unit.

If the landlord continued to hold the security deposit, in accordance with section 72, the landlord would have been entitled to retain the tenant's \$1750.00 security deposit towards the monetary amount owed to the landlord. However, the landlord returned the deposit to the tenants in this case. I note that the return of the security deposit does not result in the landlord being barred from taking action for financial loss against the tenant.

As the landlord was successful in this application, I find that the landlord is also entitled to recover the \$100.00 filing fee for this application from the tenant in addition to the \$5500.00 in rental loss.

Conclusion

I issue a monetary order to the landlord in the amount of \$5600.00.

The landlord is provided with this Order in the above terms and the tenant must be served with this Order as soon as possible. Should the tenant(s) 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: October 18, 2017

Residential Tenancy Branch