



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding NUFRAME WOOD FRAMING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

On May 24, 2017, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee.

The Landlord and Tenant attended the teleconference hearing. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on March 13, 2017, as a fixed term tenancy for 82 days. Rent in the amount of \$4,500.00 was to be paid for the term of the tenancy. The Tenant paid the Landlord a security deposit of \$650.00. The tenancy agreement states that total rent for the tenancy is due in advance by February 28, 2017, in the amount of \$4,550.00.

The Tenant requested that the rent be paid in two installments and the parties agreed to those terms. The Tenant paid the Landlord a first installment of \$2,925.00 for rent and

security deposit. The Landlord submits that the second payment of \$2,275.00 was not paid. The Landlord is seeking compensation of \$2,275.00.

The Landlord testified that he regularly rents the unit as a short term rental, but will often rent the unit for longer terms. He testified that the parties entered into a tenancy agreement to rent the unit for the period of March 13, 2017, until June 30, 2017.

The Tenant rented the unit to be used by his employee ("the occupant") who would be working in the area.

The occupant did not move into the unit until April 3, 2017, due to a job related delay. The Landlord testified that the occupant moved out of the rental unit on April 21, 2017.

The Landlord testified that after the occupant moved into the rental unit the occupant voiced concerns that there was no television provided. Shortly thereafter the Landlord received an email from the Tenant that indicated the occupant was complaining of a musty smell and air quality issues.

The Landlord testified that he did not detect an odor and there have never been previous complaints about air quality.

The Landlord testified that they offered to remedy the situation by taking steps to satisfy the Tenant; however the occupant moved out. The Landlord testified that the occupant moved out when he knew the Landlord would be away from the property.

The Landlord testified that he did not receive any notification from the Tenant whether or not the Tenant would be moving another occupant into the unit. When the Landlord went to cash the rent payment on May 1, 2017, the bank would not cash the cheque.

The Landlord testified that on April 26, 2017, the Tenant told him that the occupant did not want to move back; however, the Tenant never gave him any written notice to end the tenancy or clarification regarding his intentions to continue using the unit.

The Landlord testified that when he finally made contact with the Tenant in May 2017, he was advised that the Tenant required an air quality test before he would put another occupant back into the unit. The Landlord provided a copy of an email he received from the Tenant dated May 10, 2017, where the Tenant states that unless he has an air quality report it would be foolish to put anyone else in the unit. The Tenant states that he is quite certain the contract is nullified.

The Landlord testified that he contacted the Residential Tenancy Branch and was informed of his requirement to mitigate against any loss, so he began advertising the unit for rent as of May 24, 2017. He testified that he received three inquiries but was unable to rent the unit out for the remainder of the fixed term tenancy. The Landlord provided a copy of his advertisement to re-rent the unit that was listed in May 2017.

The Landlord testified that he had already booked short term rentals for the rental unit beginning July 1, 2017, so he could only advertise the unit as a short term rental until July 1, 2017.

In response, the Tenant's agent Mr. A.S. testified that they do not refute that the tenancy was for a fixed term starting March 13, 2017, until June 30, 2017.

Mr. A.S. testified that on April 6, 2017, three days after moving into the unit, the occupant complained of a sore throat. The occupant left for a few days and again got a sore throat within a couple of days after returning to the unit. The occupant noticed recurring symptoms and decided to move out of the rental unit.

Mr. A.S. testified that they try to find cost effective housing and that the health of their staff is their number one concern. He testified that the rental unit was only used for 18 days.

The Tenant testified that on April 26, 2017, they spoke to the Landlord, and it was official that they were not returning to the unit. The Tenant submits that the Landlord had an obligation to attempt to re rent the unit as of that date.

Analysis

The Residential Tenancy Branch Policy Guideline #8 Unconscionable and Material Terms provide that:

To end a tenancy agreement for breach of a material term the party alleging a breach – whether landlord or tenant – must inform the other party in writing:

- *that there is a problem;*
- *that they believe the problem is a breach of a material term of the tenancy agreement;*
- *that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and*
- *that if the problem is not fixed by the deadline, the party will end the tenancy.*

The Residential Tenancy Branch Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provide:

...damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Section 7 of the Act states 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.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I make the following findings:

The parties entered into a fixed term tenancy and neither party had the right to legally end the agreement unless there was a breach of a material term of the tenancy or by agreement by the parties.

I find that there was no agreement to end the tenancy and I find that that the Tenant did not take proper steps to end the tenancy for a breach of material term.

While the occupant of the Tenant moved out of the rental unit in April, 2017, the Tenant remains obligated to pay the rent up to the time the tenancy could legally have ended.

I find that the Landlord took reasonable steps to minimize the loss by advertising the rental unit. I find that the efforts of the Landlord to re-rent the unit were delayed by a lack of timely communication from the Tenant regarding whether or not they were planning to continue to occupy the rental unit.

I find the Tenant is responsible to pay the remainder of the rent owing to the Landlord under the tenancy agreement.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord is entitled to a monetary order in the amount of \$2,375.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant did not have grounds to end the fixed term tenancy early and is responsible to pay the rent until the end of the tenancy.

The Landlord has established a monetary claim in the amount of \$2,375.00.

I grant the Landlord a monetary order in the amount of \$2,375.00.

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: November 30, 2017

Residential Tenancy Branch