



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

CORRECTED - DECISION

Dispute Codes MNSD, MNR, FF

Introduction

The landlord and the tenants convened this hearing in response to applications.

The landlord's application is seeking orders as follows:

1. For a monetary order for loss or money owed;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. For a monetary order for loss or money owed;
2. Return all or part of the security deposit; and
3. To recover the cost of filing the application.

Both parties appeared, gave affirmed testimony, and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issues to be Decided

Is the landlord entitled to a monetary order?
Are the tenants entitled to a monetary order?
Are either party entitled to the security deposit?

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on September 1, 2017 and was to expire on September 1, 2018. Rent in the amount of \$2,600.00 was payable

on the first of each month. The tenants paid a security deposit of \$1,125.00 and a pet damage deposit of \$1,125.00. The parties agreed that the tenants vacated on November 30, 2017.

Landlord's application

The landlord testified that the tenants breached the fixed term agreement and is responsible for the cost of re-renting the premises. The landlord seeks to recover the amount of \$2,006.00.

The landlord testified that they advertised the rental unit on several popular websites. The landlord stated that they had several showings and were unable to find a new renter for the month of December 2017. The landlord seeks to recover loss of rent for December 2017, in the amount of \$2,600.00.

The landlord testified that they continued to advertise the rental unit and lowered the rent and they were able to obtain a new rent for January 15, 2018, at a lower month rate of \$1,850.00. The landlord seeks to recover the loss of revenue in the amount of \$1,300.00.

The tenants confirm that there is a liquated damages clause in the tenancy agreement.

The tenants testified that they gave the landlord notice to end the tenancy in October 2017, and it took the landlord until October 27, 2017, which is 11 days after they gave notice to post the rental unit for rent for December 2017. The tenants stated that this is an unreasonable delay.

The tenants testified that the landlord also reduce the potential renters as they advertised for cats only. Rather than for dogs and cats.

The tenants testified that on November 8, 2017, that they noticed that the landlord had change the advertisement looking for a renter for January 2018, which reduced potential renters for December.

The landlord responded that they did what was reasonable to find a new renter. The landlord stated as soon as the tenants informed them about just having cats in the advertising that they had it changed.

The landlord responded that they changed the advertisement after November 1, 2017, indicating the rental until is available for January 1, 2018, because this opens it up for tenant's that have to give proper notice under the Act to end their existing tenancy.

Tenants' application

The tenants submit in their application that they are entitled to double the pet deposit as it was not returned within 15 days.

The tenants testified that they should be entitled to recover their time preparing for the hearing.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, both parties have the burden of proof to prove their respective claim.

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.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-comply landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Landlord's application

How to end a tenancy is defined in Part 4 of the Act.

Tenant's notice (fixed term)

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,

...

In this case, the evidence supports the tenants breached the fixed term tenancy by providing notice to end the tenancy on November 30, 2017. However, under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I

find the tenants have breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy was September 1, 2018 as stated in the tenancy agreement.

In this matter the landlord seeks to recover the cost of re-renting the premises. As the tenancy agreement has an amount that was predetermined for the cost of re-renting the premises, if the tenancy agreement ends earlier. I find the landlord cannot exceed this amount as it was a predetermined agreed upon amount. Since I have found the tenants breached the Act, I find the landlord is entitled to recover the cost of liquidate damages in the amount of **\$1,125.00**, as stated in the tenancy agreement.

The landlord seeks to recover loss of revenue for the month of December 2017 and a portion of January 2018, in the total amount of \$2,600.00.

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this case, the landlord advertised the premises in October 2017, on several popular websites. While I accept the tenant's evidence that it was 11 days after they gave notice, I do not find this was unreasonable as the tenancy was not ending until November 30, 2017.

I accept the evidence of the landlord that they had several showings in December 2017, and were unable to find a new renter until January 15, 2018, at a significant lower rent.

While I accept there were minor errors in the advertisement when first published. That does lead me to believe the landlord did not make **reasonable efforts** to minimize the loss as the landlord was able to find a new renter at a lower rent to rent the premises for a portion of January 2018.

I find the landlord made reasonable efforts to minimize the loss. Therefore, I find the landlord is entitled to recover loss of rent for December 2017 and a portion of January 2018, in the amount of **\$3,900.00**.

I find that the landlord has established a total monetary claim of ~~\$4,000.00~~ **\$5,125.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$1,125.00** and pet damage deposit of **\$1,125.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of ~~\$1,650.00~~ **\$2,875.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenants.

Tenants' application

In this case the tenants are seeking double their pet deposit; however, the landlords' application was filed within 15 days of the tenancy ending. The landlord was entitled to retain the security deposit and pet damage deposit to have them offset for unpaid rent. The tenants are not entitled to double the deposit.

The tenants seek compensation for the time spent dealing with their application; however, each party is responsible for their own cost of preparing for the hearing only the filing fee is recoverable. The tenants' application for cost of preparing for the hearing is dismissed.

Conclusion

The landlord is granted a monetary order and may keep the security deposit and pet damage deposit in partial satisfaction of the claim and the landlord is granted a formal order for the balance due.

The tenants' application is dismissed.

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: July 25, 2018

Residential Tenancy Branch

CORRECTED ON OCTOBER 15, 2018