



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord filed under the Residential Tenancy Act (the “Act”), for a monetary order for unpaid rent and loss of rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

The landlord’s agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on October 30, 2018, a Canada post tracking number was provided as evidence of service. The tracking number history shows the tenant signed for the package on November 2, 2018. I find that the tenant has been duly served in accordance with the Act.

The Residential Tenancy Branch indicates the tenant was provided a copy of new hearing documents, by email on February 14, 2019.

The landlord’s agent appeared gave affirmed testimony and was 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 evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent and loss of rent?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties entered into a three (3) fixed term tenancy which began on June 15, 2018 and was to expire on June 30, 2021. Rent in the amount of \$3,125.00 was payable on the first of each month. The tenant paid a security deposit of \$1,562.50. The tenancy ended on October 1, 2018. Filed in evidence is a copy of the tenancy agreement.

The landlord claims as follows:

a.	Unpaid rent for October 2018 and prorated rent for November 2018	\$ 4,687.50
b.	Year 1 - Difference between new rent and tenant's rent from November 2018 to June 2019 \$425.00 x 8 month	\$ 3,400.00
c.	Year 2 – Difference between new rent and tenant's rent from July 2019 to June 2020	\$ 6,600.00
d.	Year 3 – Difference between new rent and tenant's rent from July 2020 to June 2021	\$ 8,160.00
e.	Filing fee	\$ 100.00
	Total claimed	\$22,947.00

The landlord's agent testified that the tenant breached the fixed term agreement as they gave notice on September 25, 2018, that they would be vacating on October 1, 2018. The agent stated that due to short notice they could not find a new renter until November 15, 2018. The landlord seeks to recover unpaid rent for October 2018, in the amount of \$3,125.00 and prorated rent for November 2018, in the amount of \$1,562.50. The landlord seeks to recover unpaid rent in the total amount of \$4,687.50.

The landlord's agent testified that they advertised the unit as soon as they knew the tenant was vacating; however, all the applicants they interviewed would not pay the post rental rate of \$3,125.00 and as a result they had to accept the best offer that was available to them.

The landlord's agent testified that not any of the applicants would agree to enter into a three (3) fixed term tenancy agreement. The agent stated that they found a new renter that would agree to a one (1) year fixed term at the lower rent of \$2,700.00. The landlord seeks to recover the difference of rent between the new renter and the defaulting tenant's rent at the rate of \$425.00 per month for the remainder of the first year. Filed in evidence is a copy of that agreement.

The landlord's agent testified that they seek further loss of rent to the end of the fixed term June 2021.

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, the landlord has the burden of proof to prove their claim.

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-complying 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.

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 of the landlord's agent was that the tenant breached the fixed term tenancy by providing notice to end the tenancy on September 25, 2018 effective October 1, 2018. However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement, which was June 2021. I find the tenant has breached section 45(2) of the Act as the earliest date they could have legally ended the tenancy the dates stated in the tenancy agreement.

As the landlord was not able to find a new tenant due to short notice for October 2018 and a portion of November, I find the landlord is entitled to recover unpaid rent in the amount of **\$4,687.50**.

Since the tenant failed to comply with the Act by ending the tenancy earlier than the Act allows. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. This may include compensating the landlord for the difference between what they would have received from the defaulting tenant and what they were able to re-rent the premises for the balance of the un-expired term of the tenancy

In this case, I am satisfied the landlord mitigate the loss by re-renting the premises on November 15, 2018. However, that was a one (1) year fixed term that was to expire on November 30, 2019 and at a lower rent of \$2,700.00. I find the landlord is entitled to recover the difference in rent of \$425.00 from December 2018 to November 30, 2019, in the total amount of **\$5,100.00**

Since the rent for November 2018 was \$3,125.00 and I have compensated the landlord up to November 14, 2018, earlier in this decision. I find the landlord is entitled to the difference from November 15, 2018 to November 30, 2018. The defaulting tenant's rent for this period was the amount of \$1,562.50 and the landlord collected or should have, the amount of \$1,350.00 from the new renter, I find the difference for November 15 to November 30, 2018, rent, is the amount of **\$212.50**.

However, I am not satisfied that the landlord is entitled to recover compensation from December 2019 to June 2021, as the landlord has a duty under section 7(2) of the Act. The landlord must do whatever is reasonable to minimize the loss. As this new renter's agreement is only a one (1) year fixed term, I find it would be unfair to grant compensation past the end date in the new rental agreement, which is November 30, 2019.

I find at this time, it is impossible for me to determine if the landlord has suffered a loss from December 2019 to November 30, 2021, as required by the Act, and if they have complied with section 7(2) of the Act for these subsequent time period. I find this portion of the landlord's claim is premature as they cannot assess damages that have not yet occurred. Therefore, I dismiss this portion of the landlord's claim with leave to reapply. This does not extend any statutory time limits under the Act.

I find that the landlord has established a total monetary claim of **\$10,100.00** 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 \$1,562.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$8,537.50**.

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

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: March 08, 2019

Residential Tenancy Branch