



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-S, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover herits filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenant with the notice of hearing package and the submitted documentary evidence via Canada Post Registered Mail. The landlord confirmed that a second and third evidence package(s) submitted to the Residential Tenancy Branch (RTB) were not served to the tenant. Both parties confirmed the landlord served the tenant with submitted documentary evidence via Canada Post Registered Mail on March 15, 2019. Neither party raised any service issues. I accept the undisputed evidence of both parties and find that both parties have been sufficiently served with the notice of hearing package the tenant's attached evidence package. I also accept the undisputed testimony of both parties that the landlord served the tenant with a submitted documentary evidence package via Canada Post Registered Mail on March 15, 2019. On the landlord's second and third submitted documentary evidence packages received by the RTB, I find based upon the landlord's undisputed testimony that these were not served to the tenant and as such are excluded from consideration in this decision.

Extensive discussions at the outset with both parties revealed an amended monetary claim lowering the amount from \$3,200.00 to \$1,700.00 which consists of loss of rental income of \$1,600.00 (for January 2019) and recovery of the \$100.00 filing fee.

At the conclusion of the hearing, the tenant provided a mailing address for her workplace and confirmed that she would receive personal mail at that location. As such, the Residential Tenancy Branch File shall be updated to reflect the new mailing address.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and recovery of the filing fee?
Is the landlord entitled to retain all or part of the security deposit?

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.

This tenancy began on August 1, 2018 on a fixed term tenancy until August 1, 2019 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated July 13, 2018. The monthly rent was \$1,600.00 payable on the 1st day of each month and a security deposit of \$800.00 was paid on August 1, 2018.

The landlord seeks a monetary claim of \$1,700.00 which consists of:

\$1,600.00	Loss of Rental Income, January 2019
\$100.00	Recovery of Filing Fee

Both parties confirmed that the tenant gave verbal notification which was followed by an email on November 28, 2018 with the tenant's notice to vacate at the end of December 2018 (31st).

Both parties agreed that the landlord had advised the tenant to assist in advertising the unit for rent, which the tenant confirmed that she started on November 28, 2018. Both parties confirmed that this consisted of online ads on various platforms. The landlord stated that over the re-renting process she had showings of approximately 20-30 for which a new tenant was not found until mid January 2019 for February 1, 2019.

Both parties agreed that on approximately December 10, 2018 the landlord assumed the main responsibility of advertising the unit for rental.

The tenant argued that the landlord did not mitigate the loss by advertising the rental unit immediately or organizing the re-rental process. The landlord argued that the re-rental advertising was begun by the tenant at the direction of the landlord. Both parties confirmed that the tenant would advertise the unit and refer prospective clients to the landlord.

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.

In this case, both parties have confirmed that the tenant provided notice to vacate the tenancy and end the signed tenancy agreement pre-maturely on November 28, 2018 via email for December 31, 2018 instead of August 1, 2019. Both parties agreed that the landlord directed the tenant to assist in advertising the unit for rent which the tenant agreed to and began on November 28, 2018. The landlord provided undisputed testimony that between November 28, 2018 and mid January 2019 she received contact leads from the tenant and that she performed 20-30 showings of the rental unit. The landlord provided undisputed testimony that a new tenant was found and secured in mid January 2019 for occupancy on February 1, 2019.

Residential Tenancy Branch Policy Guideline #5, Duty to Minimize loss 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 loss. 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. The tenant who finds his or her possessions are being damaged by water due to an improperly maintained plumbing fixture must remove and dry those possessions as soon as practicable in order to avoid further damage. If further damages are likely to occur, or the tenant has lost the use of the plumbing fixture, the tenant should notify the landlord immediately. If the landlord does not respond to the tenant's request for repairs, the tenant should apply for an order for repairs under the Legislation². Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim.

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...

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent. Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect. Oral notice is not effective to end the tenancy agreement, and the landlord may require written notice before making efforts to re-rent. Where the tenant has vacated or abandoned the rental unit or site, the landlord must try to rent the rental unit or site again as soon as is practicable.

In this case, I find based upon the evidence provided by both parties that the landlord made an arrangement with the tenant to immediately advertise the unit for rent. The tenant accepted this arrangement and began advertising the unit for rent. Both parties also provided undisputed testimony that the tenant referred this responsibility back to the landlord later and the landlord began advertising herself on approximately December 10, 2018. The landlord provided undisputed testimony that she did receive some referrals from the tenant, but did not successfully find a tenant until mid January 2019 for February 1, 2019. As such, I find that the landlord made reasonable efforts to mitigate any possible losses by having the tenant immediately begin advertising the unit for rent. The landlord was not successful in finding a new tenant for January 2019 and suffered a loss of rental income of \$1,600.00. The landlord's application is granted.

The landlord having been successful is also entitled to recovery of the \$100.00 filing fee. I authorize the landlord to offset the \$1,700.00 monetary claim with the \$800.00 security deposit currently held.

Conclusion

The landlord is granted a monetary order for \$900.00.

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: April 02, 2019

Residential Tenancy Branch