



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 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.

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

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 loss of rent?

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

Background and Evidence

The parties agreed that they entered into a fixed term tenancy which began on September 1, 2018 and was to expire on February 28, 2019. Rent in the amount of \$1,100.00 was payable on the first of each month. The tenant paid a security deposit of \$550.00. The tenancy ended on December 1, 2018.

The landlord claims as follows:

a.	Loss of rent for December 2018, January and February 2019	\$2,750.00
b.	Filing fee	\$ 100.00
	Total claimed	\$2,850.00

The landlord testified that the tenant breached the fixed term tenancy by giving notice to end the by email on November 3, 2018 to end tenancy on December 1, 2018. The landlord stated that the tenant informed them that they were ending the tenancy because they were scared having to drive the dark road into work each day. Filed in evidence is a copy of the email, which supports the landlord's testimony.

The landlord testified that the tenant was placed on notice that they would be responsible for any loss of rent. The landlord stated that they advertise the rental unit; however, they had no potential renters for December 2018.

The landlord testified that they did use the tenant's rental unit for 10 days as they had to temporarily move another tenant due to a domestic safety issue. The landlord stated that they prorated the loss of rent for December 2018, to reflect the 10 days of use.

The landlord testified that they discovered in December 2018, that the tenant had interfered with their attempts to re-rent the premises, by placing on their advertisement that it was a scam. Filed in evidence is a copy of scam alert the tenant placed on the advertising.

The landlord testified that they tried to have the scam alert removed; however, they were unable to as it was posted by the tenant. The landlord stated due to the tenant's action they were unable to re-rent the premises. The landlord stated that they also suffered a business loss on other rental units that were available. The landlord seeks to recover loss of rent for January and February 2019.

The tenant testified that they ended the tenancy because the landlord breached the tenancy agreement, by not removing the garbage in a timely manner and they did not have use of laundry. The tenant stated they had the right to end the tenancy due to the landlord's breach.

The tenant testified that they attached to the landlords advertisement that it was a scam. The tenant stated they have the right to post what they believe to be true.

The tenant testified that they were told by several people that the landlord did not return other tenants security deposit and this is all a scam to keep their security deposit.

The tenant testified that the landlord did not mitigate the loss to re-rent the premise. The tenant testified that the landlord did not do a move-in inspection and they are entitled to the return of their deposit and have a future hearing for its return.

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-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.

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, I accept the landlord testimony over the tenant's that the tenant end the tenancy because they did not like driving the road in the dark. This is supported by the tenant's notice to end tenancy.

I do not accept the tenant's version that they end the tenancy due to a breach of a material term of the tenancy agreement. I find it more likely than not that the tenant is retaliating because they are upset that the landlord placed them on notice that they would be responsible for loss rent for the balance of the fixed term agreement.

I find the tenant has breached section 45 of the Act, when they gave notice to end the tenancy prior to the date specified in the tenancy agreement.

Further, I find whether the landlord has retained other security deposits from other tenancies is not relevant. Those parties are entitled to make their own application after providing their forwarding address in writing as required by the Act, if they feel they are entitled to the return of the security deposit. The tenant cannot possibly know the facts relating to these matters.

While I accept the landlord has a duty to mitigate under section 7(2) of the Act for loss of rent; however, I find the tenant's actions of placing scam alerts on the landlord's rental advertisement interfered with the landlord's attempt to re-rent. I find the tenant's action was unreasonable and the tenant is directly responsible for the lack of potential renters.

Further, I find the tenant's comments in the scam alert are not supported by their email of November 3, 2018. The scam alert says the management are horrible. Yet in the email the tenants stated to the landlord, that they like the landlord and appreciate everything.

I find the tenant's action of placing a scam alert on a public website troubling. **The tenant is cautioned that providing false information on a public site is a serious matter and could have serious legal consequences.**

I find the landlord is entitled to recover loss of rent for December 2018, in the prorated amount of **\$745.16**. (\$1,100 divided by 31 days = \$35.48 daily rent. \$35.48 x 21 days=\$745.16)

I find the landlord is entitled to recover loss of rent for January and February 2019 in the amount of **\$2,200.00**.

I find that the landlord has established a total monetary claim of **\$3,045.16** comprised of the above described amounts and the \$100.00 fee paid for this application.

Further, I find the landlord filed their application on January 12, 2019, which was within 15 days of the tenancy ending. I find the landlord has complied with section 38(1) of the Act.

I order that the landlord retain the security deposit of **\$550.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$2,495.16**.

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: April 08, 2019

Residential Tenancy Branch