



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, 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, for damages to the unit and for an order to retain the security deposit in partial satisfaction of the claim.

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 unpaid rent?

Is the landlord entitled to monetary compensation for damages?

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 July 25, 2018 and was to expire on July 31, 2019. Rent in the amount of \$4,200.00 was payable on the first of each month. The tenant paid a security deposit and a pet damage deposit (the “Deposits”) of \$4,200.00. The tenancy ended on January 30, 2019.

The landlord claims as follows:

a.	Rent for January 2019 to June 2019	\$25,200.00
b.	Filing fee	\$ 100.00
	Total claimed	\$25,200.00

The landlord testified that the tenant breached their fixed term tenancy by giving written notice on December 6, 2018 to end the tenancy on January 31, 2019. The landlord stated that the tenant did give verbal notice in November 2018.

The landlord testified that the tenant did not pay rent of January 2019, although they were still living in the rental unit. The landlord seeks to recover unpaid rent for January 2019, in the amount of \$4,200.00.

The landlord testified that they seek to recover loss of rent for February 2019 to June 2019 (5 months).

The landlord testified that they started to advertise the premises on November 26, 2018, on several popular websites at the rental price listed in the tenancy agreement. The landlord stated that they reduced the rent on December 6, 2018 to the amount of \$3,950.00.

The landlord testified that there were two factors that had a role in not finding a new renter. The landlord stated that the first factor was that trying to find a new renter in December, January and February are difficult due to the time of the year. The second factor was the due the new speculation tax there was a lot of new rentals on the market.

The landlord testified that also the owners of the property once they received notice that the tenant was ending the tenancy informed them that they had planned to move back into the rental unit at the end of the fixed term. The landlord stated that the owners had the right to end the tenancy at the end of the fixed term by giving the tenant notice pursuant to section 49 of the Act. The landlord testified that this impacted potential new renters as the rental unit was now only available for a short period of time.

The landlord testified that they had found a potential new renter that was willing to rent the premise for a period of three months at a rental rate of \$3,000.00. The landlord stated that they did not enter into a short term agreement because the tenant would not accept the new renter because the rent was lower.

The landlord testified that they continued to advertise the unit and continue to reduce the rent; however, due to the time of the year, and the short term rental they were unable to find a new renter.

The landlord testified that the owners of the property are planning to move in to the premise in July 2019, mitigating the loss of rent for July.

The tenant testified that they had paid rent for January 2019 by automatic debt; however, they had their financial institute reverse the debit as the landlord cancelled a meeting. The tenant acknowledged that they lived in the rental unit for January 2019 and rent was not paid.

The tenant testified that they the landlord did talk to them about a potential new renter in December 2018; however they told the landlord that they should not accept the new renter because the offer of \$3,000.00 per month rent was low, and it was a three month term tenancy. The tenant stated that they though accepting this offer was too soon and was hopeful that better options would be presented.

The tenant testified that there were some problems with the advertising in November 2018, such as the landlord advertising the premise as fully furnished. The tenant stated that they wanted the advertisement changed as they did not want that to be the main title. The tenant stated that it was also listed that the landlord wanted a one year fixed term, which was longer than the term remaining on their fixed term tenancy agreement.

The tenant testified that they had arranged a meeting with the landlord on January 8, 2019 to discuss a strategy to re-rent the premises, such as leaving furniture behind to accommodate a short term rental; however, the landlord cancelled the meeting two hours before the scheduled time.

The tenant stated on January 28, 2019 they finally sat down to discuss the issue and found it frustrating because the landlord now was discussing them having the rental unit furnished which they could no longer accommodate as most of their belongings had been removed.

The tenant testified that the landlord also showed the rental unit on January 14, 2019; however, they were not notified of the viewing. The tenant stated that they were in the process of packing and because they were not notified they were unable to present the

unit in a neat and tidy manner as they usually would do. The tenant stated that this was a missed opportunity.

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.

Section 26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The evidence of the tenant was that they had January 2019, rent by automatic debt reversed because the landlord cancelled a meeting that was scheduled for January 8, 2019. Although I accept cancelling the meeting frustrated the tenant, this does not give the tenant the right under the Act to withhold rent simply because they feel justified to do so. I find the tenant breached section 26 of the Act, when they failed to pay rent for January 2019. Therefore, I find the landlord is entitled to recover unpaid rent in the amount of **\$4,200.00**

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,

...

I accept the evidence of both parties that the tenant gave verbal notice to end the tenancy in November 2018, and the landlord received the official written notice to end the tenancy on December 6, 2018. I find the tenant breached section 45 of the Act as the earliest they were entitled to end the tenancy was July 31, 2019, which is the date specified in the tenancy agreement.

Although I accept that there were some changes made to the initial advertising, I find that these were not significant enough to reduce potential renters. Further, the advertisement was posted before the tenant gave written notice.

Further, I find the landlord's action of changing the terms on the advertisement to a short term rental as their plans were for the owners to move back into the premises after the expiry of the fixed term agreement not unreasonable. The owner had the right to end the tenancy at the end of the fixed term with proper notice. The landlord had an obligation to ensure any new renter was fully aware that this would be for a short rental period.

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 had an offer to rent the premises at the rate of \$3,000.00 for a short term rental of three months. The tenant rejected the offer as they wanted to find a more suitable arrangement. I find the evidence supports both parties failed to mitigate the loss. While I accept the tenant rejection influenced the landlord not enter into the short term agreement, I find it was the landlord who had the final decision to accept the

offer, not the tenant. The landlord knew at that time that those months were not favorable months to rent and there was the increase of rental units on the market due to the speculation tax.

As I have found both parties failed to mitigate the loss for the first three months, I find the landlord is entitled to collect the difference in the rent. The landlord could have rented the premise for \$3,000.00 for a three month period. I find the tenant is responsible for the difference between the two rents. I find the landlord is entitled to recover the difference of \$1,200.00 per month for the three months in the total amount of **\$3,600.00**.

I am satisfied that the landlord made reasonable efforts to attempt rent the premises for May and June of 2019, the landlord advertised the rental unit and reduced rent in the attempt to mitigate. No new renter for found. I find it is not unreasonable that a potential new renter would not be interested in renting a premise for such a short period of time. As I have found the tenant breached the section 45 of the Act, I find the landlord is entitled to recover loss of rent for May and June 2019, in the amount of **\$8,400.00**.

Further, I accept the evidence of the landlord that the owners are moving into the premises earlier than expected, mitigating a further loss of rent for July 2019.

I find that the landlord has established a total monetary claim of **\$16,200.00** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the Deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$12,000.00**.

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 Deposits 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: June 5, 2019

Residential Tenancy Branch