Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, FF

Introduction

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

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover her filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing via conference call and provided testimony. Both parties confirmed the landlord served the tenants with the notice of hearing package and the submitted documentary evidence via Canada Post Xpress Post on February 27, 2019. The tenants state that the landlord was served with the submitted documentary evidence via Canada Post Registered Mail on May 28, 2019. The landlord disputes stating that no such evidence has been received. The tenants provided direct testimony detailing the Canada Post Customer Receipt Tracking Number (noted on the cover of this decision). Both parties consented to the Arbitrator reviewing the Canada Post Website for clarification. The tenant confirmed using the landlord's PO Box for delivery of the package. A review of the Canada Post Online Tracking shows that the package was received by Canada Post on May 28, 2018 and an attempted delivery notice was noted on June 3, 2019 was left. The landlord stated that she was just at the Post Office prior to the scheduled hearing did not see a notice card. In the circumstances, I find that I prefer the evidence of the tenants over that of landlord regarding service of the tenants' documentary evidence. As such, I find that the both parties have been properly served with the notice of hearing package and that the documentary evidence of the landlord. I find that the landlord has been sufficiently served with the tenants'

documentary evidence as per section 90 of Act. Although the tenants' evidence is considered received late by the landlord 5 days later, I accept this evidence with the provision to describe in details any evidence referred to by the tenants for the hearing.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss 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.

Both parties confirmed this tenancy began on August 1, 2018 on a fixed term until August 1, 2019 on a "Farm Lease" signed and dated on July 26, 2018. Both parties confirmed the primary purpose of the lease was for Residential purpose. The monthly rent was $1,300.00 payable on the 1st day of each month.

The landlord seeks a monetary claim of $4,990.91 which consists of:

$3,900.00	Unpaid Rent/Loss of Rental Income, 3 months
$1,090.91	Compensation, Tenant failed to re-fill propane as per Tenancy Agreement

The landlord claims that the tenant vacated the rental unit without proper 1 months' notice which caused the landlord to suffer a loss of rental income for 3 months at $1,300.00 per month. The landlord claims that verbal notice was given in which the landlord posted a sign on the rental unit door and at the end of the driveway on August 25, 2018. The landlord claims that the rental unit was later also advertised by posting a sign at the local laundromat and general store on September 17, 2018. The landlord stated that this is the normal form of advertising.

The tenants dispute the landlord's claims stating that verbal notice was given to the landlord on August 20, 2018 and again on August 24, 2018 via text message. The text message was reviewed and described in detail for the benefit of the landlord. The landlord confirmed the contents of the text message, but that she did not receive a copy. The tenants also claim that written notice to end the tenancy with the stated

reasons that the landlord has breached the tenancy agreement by providing a rental unit unsuitable for rental to end the tenancy on September 30, 2018.

The landlord disputed the tenants claims stating that at no time have the tenants provided any reasons for ending the tenancy in writing prior to vacating the rental unit.

On the landlord's second item of claim for $1,090.91 for re-fuelling of the propane tank, the landlord claims that as part of the tenancy agreement in part 4 it states that the tenants agree to re-fill the propane tank at the end of the tenancy at the tenants' cost. The landlord has provided a copy of the signed tenancy agreement dated July 26, 2018 which provides for this agreement. The landlord has also provided a photograph of the propane fuel tank gauge detailing the amount at the end of tenancy and another of the gauge after it was re-filled. The landlord clarified that the tank is considered full at approximately the 85% mark on the gauge.

The tenants argued that they had never used the propane during the tenancy and relied solely on wood fuel. The tenant also argues that the propane tank is considered full at the 75% mark on the gauge.

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, I find that the tenants did pre-maturely end the tenancy on September 30, 2018 as opposed to the fixed term tenancy ending on August 1, 2019. The landlord has provided undisputed testimony that she advertised the unit for rent by posting a sign on the door and at the end of the driveway on August 25, 2018. The landlord also followed up by posting additional signs for rent on September 17, 2018 at two local stores. The landlord stated that this was her normal form of advertising for this rental in this area. The tenants have argued that notice to end the tenancy for breach of the tenancy agreement was served to the landlord. The landlord has disputed this claim stating at no time has a written notice to vacate the tenancy stating a reason was ever received

from the tenants. The tenants have referred to a text message which both parties have commented on. A review of this text does not disclose an end of tenancy date nor a reason for ending it. The tenants also referred to an email dated September 6, 2018 which was not submitted for the hearing. I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenants and find that no written notice was served upon the landlord to end the tenancy. I found the evidence of the tenants inconsistent which conflicted. On this basis, I find that the landlord has established a claim for loss of rental income of $3,900.00 equal to 3 months of rent.

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[1]. 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 Legislation[2]. 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.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed.

I find that the landlord made reasonable efforts to re-rent the unit based upon the normal practices in advertising a place for rent in this area.
On the landlord’s claim for compensation of $1,090.91 to refill the propane tank, I find that the landlord has established a claim. The landlord has provided a copy of the signed tenancy agreement in which both parties agreed that the tenant would re-fill the

propane tank to full upon the end of tenancy. The landlord has also submitted a copy of an invoice for the specified amount. The tenants have argued that the propane tank was left on full as no use of the propane was ever made during the tenancy. The tenant has referred to a photographs submitted by the tenant indicating that the tank was full at 75% and that it could go no higher due to expansion. The landlord has argued that the tenants did use the tank and that based upon a photograph submitted by the landlord taken after the tank was filled it read 85% which contradicts the tenants claim. I find on a balance of probabilities concerning this portion of the claim that I prefer the evidence of the landlord over that of the tenant. I found the evidence of the tenants inconsistent which conflicted.

The landlord has established a total monetary claim of $4,990.91. The landlord having been successful is also entitled to recovery of the $100.00 filing fee.

Conclusion

The landlord is granted a monetary order for $5,090.91.

This order must be served upon the tenants. Should the tenants 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: June 10, 2019

Residential Tenancy Branch