Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC-S, 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, for damage to the rental unit, and 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 tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover his 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 each of the two tenants with the notice of hearing package and the 1st two documentary evidence packages via Canada Post Registered Mail on March 22, 2019. The landlord stated that remaining two additional documentary evidence packages was served to the tenants in one package via Canada Post Registered Mail on May 27, 2019. The tenants argued that although a package was received the envelope was empty. The landlord argued that the package was complete when it was given to Canada Post on May 27, 2019 and the landlord has provided in his direct testimony the Canada Post Customer Receipt Tracking Number (noted on the cover of this decision. The tenant stated that the submitted documentary evidence was not served upon the landlord.

I find that the tenants were properly served with the notice of hearing package and the 1st two documentary evidence package(s) as claimed by the landlord pursuant to sections 88 and 89 of the Act.

On the landlord's second documentary evidence package, I find on a balance of probabilities that I prefer the evidence of the landlord over that of the tenant on whether the envelope delivered contained the documentary evidence as opposed to be empty. However, both parties were notified that arguments would be held when and if the landlord made reference to the disputed evidence and the tenant would be given an opportunity to respond and make submissions.

I find that as the tenants did not serve the submitted documentary evidence in accordance with the Act, I find that the tenants' evidence shall be excluded from consideration in this decision. Both parties were advised that the tenants may refer to the excluded evidence, but that the reliability of this evidence would be weighted by the Arbitrator.

Extensive discussions over a 25 minute period with the landlord were required as the landlord was unable to adequately articulate what the monetary application was for. The landlord clarified that the monetary claim was incorrectly made and that the landlord only seeks $4,000.00 for the loss of rental income and recovery of the $100.00 filing fee. The hearing shall proceed on this basis.

During the hearing extensive discussions were made on the landlord's request to hold and offset his claim against the security deposit. The tenant provided testimony that a previous decision was made based upon an application filed by the tenant for return of double the security deposit. The landlord confirmed that a decision on the tenants' application for the security deposit had already been made. As such, this portion of the landlord's application is dismissed as I do not have jurisdiction to re-hear a claim on the security deposit.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent, for money owed or compensation for damage or loss and recovery of the filing fee?

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, 2017 on a fixed term tenancy ending on August 1, 2018 as per the submitted copy of the signed tenancy agreement dated July 27, 2017.

The monthly rent began as $1,950.00 payable on the 1st day of each month. A security deposit of $975.00 was paid.

The landlord seeks a clarified monetary claim of $4,000.00 which consists of:

$3,900.00	Unpaid Rent, August 2017	$1,950.00
	September 2017	$1,950.00
$100.00	Recovery of Filing Fee	

The landlord provided submissions that a signed tenancy agreement was entered into on July 27, 2017 between the parties and that subsequently the tenants verbally notified the landlord via telephone on July 28, 2019 that the tenants would not be taking possession of the rental unit. The landlord claims that the tenants provided email confirmation of not taking possession on either July 29 or 30. The tenant disputed this stating that the email confirmation was sent on July 31, but that notice was given to the landlord that they would not be taking possession of the rental unit. Both parties confirmed that written notification was not made.

The landlord stated that upon being notified the landlord re-advertised the unit, but was unsuccessful in re-renting it until October 1, 2017. The landlord submitted a copy of an online advertisement dated July 30, 2017.

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 confirmed that a signed tenancy agreement was made dated July 27, 2017 to begin a fixed term tenancy on August 1, 2017. The landlord provided undisputed testimony that verbal notice to end the tenancy was given to the landlord on the telephone on July 28, 2017. Both parties confirmed that an email confirmation of this notice was sent by the tenant to the landlord. The landlord claims that it was received on either July 29 or 30. The tenants claim that it was sent on July 31, 2017. In

any event the email was sent prior to the send of the month of July 2017. The landlord provided testimony that he attempted to mitigate any possible losses by re-advertising on July 30, 2017. A review of this online ad shows that the landlord did post the ad on July 30, 2017, but that it was not available until September 1 as shown.

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…

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. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation…

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.

The tenants have a duty to provide 1 clear months' notice to end a tenancy. In this case, the tenants provided 2 days, prior to the August 1, 2017 possession date.

I accept that although proper written notice was not given to the landlord by the tenants, I find that the landlord accepted this and advertised the unit for rent on July 30, 2017. However, I note that the copy of the online advertisement states that the rental unit is available on September 1. As such, I find that the landlord failed to make "a reasonable effort" to re-rent the unit for August 2017. On this basis, I find that the landlord has failed to establish a claim for loss of rental income for August 2017. This portion of the claim is dismissed.

On the second portion of the landlord's claim, I find that the landlord has been successful for establishing that there was a loss of rental income of $1,950.00 for September 2017. The landlord provided undisputed testimony that the unit was advertised beginning July 30, 2017 for September 1, 2017, but was unsuccessful in confirming a new tenant until September 30, 2017. As such, the landlord has established the loss of rental income for September of $1,950.00.

The landlord having been only partially successful is entitled to recovery of $50.00 of the filing fee.

Conclusion

The landlord is granted a monetary order for $2,000.00.

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 13, 2019

Residential Tenancy Branch