



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNR, MNSD, MNDC, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover loss of income, costs to clean the yard and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of the other's evidence. I find that the parties were served with materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order to recover loss of income, costs to clean the yard and for the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The background facts are generally undisputed. The tenancy started on August 01, 2018 and that the monthly rent was \$1,600.00 due in advance on the 1st of each month. Prior to moving in the tenant paid a security deposit of \$800.00. A copy of the tenancy agreement and addendum was filed into evidence. A term in the addendum required the tenant to maintain the yard.

The tenant stated that on June 10, 2019, he gave written notice to the landlord to end the tenancy effective July 01, 2019. The landlord stated that the tenant was not fully moved out until July 03, 2019.

Both parties made immediate efforts to find a tenant for July. Despite their efforts, a tenant was not found for July 2019. A new tenant moved in on August 15, 2019. The landlord is claiming loss of income for the month of July 2019.

The landlord also filed photographs of the yard before and at the end of tenancy. It is clear that the tenant failed to have the yard cleaned up prior to moving out. The landlord filed an estimate to have the yard tidied up and decided to mitigate her losses by taking time off work to do it herself. The quote to cut and haul away was \$452.03. The landlord is claiming her wages for the time she spent cleaning the yard which is \$324.00.

Analysis

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

The tenant agreed that on June 10, 2019, he gave notice to end the tenancy effective July 01, 2019 and was fully moved out by July 03, 2019. I find that the tenant provided inadequate notice as rent was due on the 1st of each month. Therefore by providing notice on June 10, 2019, the earliest he could end the tenancy was July 31, 2019.

In this case, I find that since the tenant did not give the landlord adequate notice to end the tenancy and moved out on July 03, 2019, the landlord suffered a loss of income for the month of July 2019. Accordingly, I find that the landlord is entitled to recover the loss that she suffered.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. I accept the landlord's testimony that she made timely efforts to re-rent the unit.

In addition the tenant cooperated with the landlord and made efforts to find a new tenant, but a tenant was not found for July 01, 2019.

Residential Tenancy Policy Guideline #5 addresses Duty to Minimize Loss and states:

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

The landlord stated that she advertised the rental unit as available on July 15, 2019 or earlier at a reasonably economic rent that was in keeping with the market rent in that area but was unable to find a tenant to move in prior to August 15, 2019.

Based on my findings, *Residential Tenancy Policy Guideline #5* and section 7 of the *Residential Tenancy Act* I find that the landlord has proven that she made sufficient efforts to minimize the loss she suffered. Accordingly I grant the landlord her claim to recover the loss of income that she incurred. I award the landlord \$1,600.00.

The landlord filed a copy of the move out inspection report. In that report she had marked off the outside areas and walkways as in a good condition. However the landlord is claiming for the cost of cleaning the yard.

The move out inspection is an opportunity for the tenant and landlord to identify damage and come to an agreement on any deductions that can be made to the security deposit. The inspection should be conducted diligently using a flashlight if necessary as it is the only opportunity to identify damage that the tenant is responsible for. The burden of proof is on the landlord to prove that the tenant is also responsible for additional damage that is identified after the move out inspection and after the report is signed by both parties.

Based on the above I find that the landlord did not notify the tenant about the unacceptable condition of the yard at the move out inspection and therefore I dismiss the landlord's claim for the cost of cleaning the yard.

The landlord has proven a portion of her claim and therefore I award the landlord the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim of \$1,600.00 for the loss of income she incurred plus \$100.00 for the recovery of the filing fee.

The landlord has established a total claim of \$1,700.00. I order that the landlord retain the security deposit of \$800.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$900.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$900.00**.

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: October 28, 2019

Residential Tenancy Branch