



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF / RPP

Introduction

This hearing was convened in response to cross-applications by the parties pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

Landlord:

- a monetary order for unpaid rent and compensation for loss or damage pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant:

- an order requiring the landlord to return the tenant’s personal property pursuant to section 65.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to service of the respective applications and evidence submissions.

Although the tenant applied for a return of personal property, the tenant’s application indicated that he was just applying in regards to his general dissatisfaction with the landlord’s agent. The tenant confirmed this in the hearing.

Issues

Is the landlord entitled to monetary compensation for unpaid rent and loss, including the filing fee for this application?

Background & Evidence

The parties entered into and signed a tenancy agreement on August 23, 2019. The tenancy was set to begin on September 15, 2019 and was supposed to be for a fixed term of one year plus 16 days expiring on September 30, 2020. The monthly rent was to be \$2200.00.

The tenant was provided a copy of the signed agreement on August 25, 2019. On August 26, 2019 the tenant sent an e-transfer of \$1100.00 for the security deposit. On August 31, 2019 the tenant cancelled the e-transfer. On September 10, 2019 the landlord received a letter from the tenant by registered mail by which the tenant advised the landlord he was revoking the tenancy.

The landlord is claiming \$1100.00. in liquidated damages as the tenant ended the fixed term tenancy early. The landlord submits the tenancy agreement signed by the tenant provides for liquidated damages to cover the administrative costs associated with re-renting the unit.

The landlord is also claiming loss of rent in the amount of \$1100.00 for the period of September 15-30, 2019. The landlord testified that once the tenant signed the agreement and sent the e-transfer for the security deposit, they removed all advertisements for the unit. The landlord testified they were not able to re-rent the unit for this period.

The tenant acknowledges breaking the lease but argues he broke the lease due to dishonest promises and lack of communication on the part of the landlord's agent. The tenant submits that the landlord originally promised a \$50.00 discount on the \$2200.00 monthly rent amount agreed to due to the unit being gas heat but later reneged on this promise. The tenant also submits the landlord promised they could move in early on September 10, 2019 but then ceased communication.

The tenant further argued that the landlord did not remove advertisements as alleged and argues the unit remained listed. The tenant provided no evidence in support of this argument.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8, Unconscionable and Material Terms, provides the following guidance:

In order to end a tenancy for a breach of a material term, the party alleging the breach must inform the other party in writing of the following:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find the tenant has failed to establish that the tenancy was ended due to a material breach of the tenancy agreement and even if it were, the tenant failed to provide the landlord with a reasonable opportunity to correct any alleged breach. I find the tenant breached the fixed term agreement and the landlord suffered a loss as a result. The reasons put forth by the tenant do not warrant breaking the fixed term contract he had entered.

The tenancy agreement signed by the parties stipulates the landlord may require the tenant to pay a sum of \$1100.00 as liquidated damages if the tenant terminates the tenancy before the end of the fixed term.

I find the amount of \$1100.00 as being a reasonable pre-estimate of the loss in order to compensate the landlord for any administrative costs incurred in re-renting the unit. I find this amount is not extravagant and does not constitute a penalty. I award the landlord **\$1100.00** in liquidated damages as claimed.

I accept the landlord's testimony and evidence and find the landlord attempted to mitigate losses by re-renting the rental unit as soon as possible but suffered a loss of rent for the period of September 15-30, 2019. I find that by the time the landlord

learned the tenant was cancelling the contract, the landlord would not have had enough time to find a suitable tenant. I award the landlord **\$1100.00** for loss of rent for the period of September 15-30, 2019.

As the landlord was successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application for a total monetary award of **\$2300.00**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$2,300.00**. Should the tenant fail to comply with this Order, this 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: November 04, 2019

Residential Tenancy Branch