



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MND, 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 and utilities, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The landlord’s agent attended the hearing. As the tenant did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that the respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord’s agent testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on August 11, 2019, a Canada post tracking number was provided as evidence of service.

The landlord’s agent testified that the package was returned incomplete; however, it was sent to the address the tenant provided in the move-out condition inspection report, which is also the same address they provided in their rental application.

I am satisfied that the landlord sent their Application for Dispute Resolution to the mailing address provided by the tenant. Therefore, I am satisfied that the tenant was duly served in accordance with the Act.

The landlord 's agent appeared gave testimony and was provided the opportunity to present their evidence orally and in written and documentary form, and to 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 entered into a fixed term tenancy which began on August 1, 2019 and was to expire on July 31, 2019. Rent in the amount of \$1,350.00 was payable on the first of each month. The tenant paid a security deposit of \$600.00.

The landlord's agent testified that the tenant moved into the rental unit on July 10, 2019, earlier than they agreed in the tenancy agreement. The agent stated that on July 26, 2019, they receive notice from the tenant that that they were vacating the rental unit immediately. Filed in evidence is a copy of the letter to end tenancy.

The landlord's agent testified that because the tenant did not give sufficient notice, they were unable to find a new renter for August. The landlord seeks to recover unpaid rent in the amount of \$1,350.00.

The landlord's agent testified that the tenancy agreement has a liquidate damages clause that required the tenant to pay \$600.00 which was a pre-estimated cost of re-renting the premises if the tenant did not fulfill their obligations under the fixed term tenancy. The landlord seeks to recover the liquidated damage in the amount of \$600.00. filed in evidence is a copy of the tenancy agreement show a liquidated damages clause.

The landlord's agent testified that the tenant was required to pay 25% of the utilities. The agent stated that the landlord seeks to recover from July 10 to July 17, 2019 in the amount of \$24.88.

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.

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,*

...

In this case, the evidence of the landlord's agent was that the tenant breached the fixed term tenancy by providing notice to end the tenancy on July 26, 2019. However, under the Act the tenant was not entitled to give notice to end the tenancy prior to the date

specified in the tenancy agreement. I find the tenant has breach section 45(2) of the Act as the earliest date they could have legally ended the tenancy was July 31, 2020 as stated in the tenancy agreement.

While I note in the tenant's letter to end the tenancy, that they are alleging a breach of a material term of the tenancy agreement. I find the reasons stated in the letter are not a material term and even if they were, they must give prior notice and give the landlord a reasonable amount of time to address the issues. The tenant gave notice on July 26, 2019 and vacated on July 27, 2019.

Since the tenant failed to comply with the Act by not given the landlord sufficient notice to end the tenancy. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenant had not breached the Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenant could have legally ended the tenancy.

As the tenant did not give the landlord any reasonable notice to end the tenancy, I find the landlord is entitled to recover loss of rent for August 2019, in the amount of **\$1,350.00**.

As the tenant breached the tenancy agreement, I find the landlord is entitled to recover the liquidated damages as stated in the tenancy agreement. Therefore, I find the landlord is entitled to recover liquidated damages in the amount of **\$600.00**.

The tenancy agreement requires the tenant to pay 25% percent of the utilizes. The tenant was living in the rental unit from July 10 to July 27, 2019. I find the tenant is required to pay their portion of the utilities in the amount of **\$24.88**.

I find that the landlord has established a total monetary claim of **\$2,074.88** comprised of the above described amounts and the \$100.00 fee paid for this application.

I order that the landlord retain the security deposit of **\$600.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$1,474.88**.

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 security deposit 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: November 21, 2019

Residential Tenancy Branch