



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC,

Introduction

On August 30, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for unpaid rent or utilities; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the hearing. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing. The parties confirmed that they exchanged the documentary evidence before me.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that they entered into a tenancy agreement on April 25, 2019 for a tenancy to begin on May 1, 2019 for a four-month fixed term ending on August 30, 2019. Rent in the amount of \$885.00 was to be paid to the Landlord by the first day of each month.

The Landlord is seeking a monetary order for unpaid rent, and a loss of rent, due to the Tenant backing out of the tenancy agreement. The Landlord is also seeking to recover a loss of rent due to her having to rent the unit at a reduced monthly rent.

The Landlord is seeking the following compensation:

<u>Month</u>	<u>Amount Owing</u>
May 2019 rent	\$885.00
June 2019 rent	\$885.00
Loss of rent for July & August	\$270.00
Filing Fee	\$100.00

The Landlord testified that the Tenant changed her mind about moving into the rental unit after signing the tenancy agreement. The Landlord testified that the Tenant did not pay the rent of \$885.00 owing under the tenancy agreement for the month of May 2019.

The Landlord testified that the Tenant did not end the tenancy with any proper written notice, so this delayed her in advertising the unit until May 6, 2019. She also submitted that she was out of town at this time and needed to coordinate the advertising with a roommate who was acting as her agent. The Landlord testified that on May 6, 2019 the unit was posted for rent on a local website and she attempted to rent the unit for the same monthly rent of \$885.00. The Landlord provided a document showing that an advertisement was posted on a website on May 6, 2019 for \$885.00. The Landlord provided copies of some email inquires made for the rental unit throughout May 2019.

The Landlord testified that she was not able to find a new tenant for the month of June 2019 and she suffered a loss of rent in the amount of \$885.00. The Landlord testified that halfway through June she reduced the monthly rent and advertised it at \$750.00.

The Landlord testified that she was able to rent the unit for the months of July and August at the lower monthly rent of \$750.00 per month. The Landlord is seeking to recover a loss of rent of \$135.00 for July and \$135.00 for August.

The Landlord seeks a monetary order for a loss of rent in the amount of \$2,040.00.

In response to the Landlord's claims the Tenant acknowledged that she did not move into the rental unit and she did not pay the rent owing under the tenancy agreement for May and June.

The Tenant testified that when she saw the lease, she asked to take it away to review it but was pressured to sign it immediately. She testified that she signed the lease but was feeling uncomfortable about moving in, so she changed her mind. She testified that on April 27, 2019 she notified the Landlord that she was not moving into the unit.

The Tenant submitted that she agrees that she owes the Landlord rent for May 2019; however, she feels that one month is plenty of time for the Landlord to have found a new tenant. The Tenant submitted that the Landlord had told her that other people were interested in the unit. The Tenant provided documents showing rental market statistics including vacancy rates for the city.

The Tenant also testified that the Landlord re-rented the unit at the lower monthly rent of \$750.00 to the Landlord's roommate who had sublet her own room and was looking for a place to rent.

The Landlord provided testimony confirming that her roommate had sublet her own room for four months but returned to the house in July and needed a place to stay. The Landlord testified that since she was not having any luck renting out the Tenant's unit, she offered it to her roommate at \$750.00 per month.

Analysis

Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides the following information;

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy. For example, a tenant has agreed to rent premises for a fixed term of 12 months at rent of \$1000.00 per month abandons the premises in the middle of the second month, not paying rent for that month. The landlord is able to re-rent the premises from the first of the next month but only at \$50.00 per month less. The landlord would be able to recover the unpaid rent for the month the premises were abandoned and the \$50.00 difference over the remaining 10 months of the original term.

Based on the evidence before me, the testimony of the Landlords and Tenants, and on a balance of probabilities, I find that the Landlord and Tenant entered into a lease agreement on April 25, 2019 for a tenancy to begin on May 1, 2019 for a four-month term with rent at \$885.00 per month.

I find that the Tenant changed her mind and did not move into the rental unit. I find that the Tenant is responsible to pay the rent owing under the tenancy agreed until such time as the Landlord could re-rent the unit.

I accept the Landlord's evidence that the rental unit was advertised for rent in early May 2019. I find that the Landlord mitigated against the loss of rent by advertising the rental unit.

I have considered the Tenant's submission that the vacancy rates in the city are quite low and that the Landlord should have been able to find a new Tenant. I am also mindful that it could be difficult to find a tenant willing to rent a unit for such a short period of time. The fixed term tenancy was set to end on August 30, 2019 and it is reasonable to accept that the pool of people interested in such a short-term tenancy would be low. I accept the Landlord's evidence that she was not able to rent the unit out for May and June.

I find that the Tenant is responsible to pay the Landlord the rent owing under the tenancy agreement for the months of May 2019; and June 2019. I find that the Tenant owes the Landlord rent in the amount of \$1,770.00.

With respect to the loss of rent of \$270.00 for July and August, I find that the Landlord has an obligation to mitigate against the loss of rent. If the Landlord had turned down the opportunity to rent the unit out at the lower monthly rent, the Landlord may have been found to have failed to mitigate against the loss. If the Landlord had not reduced the rent, the Tenant may have faced a claim for the entire loss of July and August rent. While I acknowledge that the person who rented the unit was a roommate of the Tenant, I accept that the Landlord had advertised the unit and was not able to find a new tenant until the opportunity arose with her roommate.

I find that the Tenant is responsible to pay the Landlord the loss of rent for the months of July and August 2019. I find that the Tenant owes the Landlord the amount of \$270.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord's claim was successful. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$2,140.00 comprised of \$2,040.00 in unpaid rent, and the \$100.00 fee paid by the Landlord for this hearing. I grant the Landlord a monetary order in the amount of \$2,140.00. This monetary 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 Tenant breached a fixed term tenancy agreement by failing to move into the rental unit and pay the rent owing under the tenancy agreement. The Tenant is responsible to pay the rent owing under the tenancy agreement up to the point where a new Tenant was found.

The Landlord mitigated against the loss of rent by advertising the unit and finding a new tenant starting July 1, 2019.

The Landlord has established a monetary claim for unpaid rent and the filing fee in the amount of \$2,140.00.

The Landlord is granted a monetary order in the amount of \$2,140.00.

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: January 22, 2020

Residential Tenancy Branch