



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes 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 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 their filing fee for this application from the tenant pursuant to section 72.

Both parties attended the hearing via conference call and provided affirmed testimony. Both parties confirmed the landlords served the tenants with the notice of hearing package via Canada Post Registered Mail on October 18, 2019. The landlord submitted two documentary evidence packages. The first evidence via Canada Post Registered Mail. The tenants dispute this claim stating that no such evidence has been received. The landlords stated that he was not prepared and cannot provide any service details for this package. The second evidence package was served on February 10, 2020 in person. The tenants confirmed receipt of this package. Both parties confirmed the tenants served the landlords with their documentary evidence package via Canada Post Registered Mail on January 8, 2020.

I accept the affirmed testimony of both parties and find that the landlord's notice of hearing package; the landlord's second documentary evidence package and the tenants' documentary evidence package were sufficiently served as per sections 88 and 89 of the Act. On the landlord's initial documentary evidence package, I find is excluded as the tenants' have argued that no such package was received and the landlord was unable to provide sufficient details/evidence in support of service.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and recovery of the filing fee?

Are the landlords entitled to retain all or part of the security deposit?

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 April 15, 2019 on a fixed term tenancy ending on April 15, 2020 and then thereafter on a month-to-month basis as per the submitted copy of the signed tenancy agreement dated March 31, 2019. The monthly rent was \$2,200.00 payable on the 1st day of each month. A security deposit of \$1,100.00 and pet damage deposit of \$1,100.00 were paid on March 31, 2019.

The landlords seek a clarified monetary claim of \$2,200.00 for loss of rental income for November 2019. The landlords stated that the tenants prematurely ended the tenancy on October 1, 2019 in a fixed term tenancy ending on April 15, 2020.

The landlords claim that the tenants gave notice to end the tenancy on September 1, 2019 for October 1, 2019. The landlords stated that the rental unit was immediately advertised for rent for October 1, 2019 and then subsequently for November 1, 2019 after being unsuccessful. The landlord clarified that despite advertising the unit, no showings were booked for October 2019. The landlords stated that only 3 showings took place in November 2019 and that there was no interest to rent the unit. The landlords provided affirmed testimony that extensive cleaning and repairs were made in October 2019 to make the unit rentable for November 2019.

The tenants confirmed that notice to end the tenancy was given on September 1, 2019 for October 1, 2019. Both parties confirmed the tenancy ended on October 1, 2019 when the keys were returned to the landlords.

Both parties confirmed the landlords currently hold the entire \$1,100.00 security and the \$1,100.00 pet damage deposits as of the date of this hearing.

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, I accept the undisputed affirmed testimony of both parties that the tenancy ended on October 1, 2019 after the tenants provided written notice to end the tenancy on September 1, 2019. The landlords provided undisputed affirmed evidence that immediately upon being notified the landlords advertised the unit for rent for October 1, 2019 and then later for November 1, 2019, but despite their efforts the unit was unrented for those two months. The landlords clarified that he seeks only recovery of loss of rental income for November 2019 as cleaning and repairs had taken place by the landlords during October 2019. I find that the tenants prematurely ended the fixed term tenancy on October 1, 2019 instead of April 15, 2020, the end of the fixed term as per the signed tenancy agreement.

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 loss¹. **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...

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.*

I also find based upon the undisputed affirmed testimony of the landlords that the landlords have made reasonable efforts to mitigate possible losses in rent for November 2019. The landlords immediately upon being notified on September 1, 2019 advertised the rental unit to be available for October 1, 2019 and then again for November 1, 2019. On this basis, I find that the landlords have established a claim for loss of rental income of \$2,200.00 for November 2019.

The landlord having been successful is also entitled to recovery of the \$100.00 Filing Fee.

I authorize the landlords to retain the \$1,100.00 security and the \$1,100.00 pet damage deposits in partial satisfaction of this claim.

Conclusion

The landlords are granted a monetary order for \$100.00.

This order must be served upon the tenants. Should the tenants fail to comply with this 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: February 24, 2020

Residential Tenancy Branch