



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD 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;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement 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 the filing fee for this application from the tenant pursuant to section 72.

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

Issues

Is the landlord entitled to a monetary award for unpaid rent, loss of rent and compensation for loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy for this 2-bedroom apartment began April 2019 with a monthly rent of \$3000.00 payable on the 1st day of each month. The tenants paid a security deposit of \$1500.00 at the start of the tenancy which the landlord continues to hold.

The landlord testified that the tenant gave notice to vacate on October 1, 2019 and vacated the unit on October 6, 2019. The landlord is claiming unpaid rent and/or loss of rent for October 2019 and November 2019. The landlord testified that they were able to mitigate losses by relocating an existing tenant in the building from to the 2-bedroom from a 1-bedroom unit. They were able to relocate the tenant within three days of the tenants vacating. The landlord testified that the 1-bedroom rent was \$1825.00 per month versus the \$3000.00 for the 2 -bedroom. The landlord testified that they were not able to re-rent the 1-bedroom until January 2020 but are only claiming loss of rent up to November 2019. The landlord submits they did receive a \$1500.00 rent payment towards October 2019 rent from the tenants' insurance company. The landlord is therefore claiming prorated rent for October 1-8, 2019 in the amount of \$774.16 based upon the 2-bedroom rate plus a prorated rent for October 9-31, 2019 of \$1354.01 based upon the 1-bedroom rate less the \$1500.00 payment received for a total of \$628.17 for October 2019. The landlord is also claiming loss of rent of \$1825.00 for November 2019 also based upon the 1-bedroom rate.

In addition to the above, the landlord is claiming \$25.00 late fee charge for October 2019 plus a \$150.00 move-out fee as per Part 5 section 5 of the tenancy agreement.

The tenants acknowledge not providing sufficient notice to vacate. The tenants submitted that they looked for the apartment manager in order to deliver notice to vacate but the manager was not there for the entire month. The tenants argued that the landlord was able to relocate another tenant immediately, so no loss was suffered. The tenants argued it was the landlord's choice to relocate an existing tenant rather than finding new tenants as plenty of people were interested in that unit.

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. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Section 45(1) of the Act sets out the following:

A tenant may end a periodic 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 after the landlord receives the notice, and
- (b) is before the day in the month...that rent is payable under the tenancy agreement.

A notice given under this section must be in writing and comply with the form and content requirements of section 52 of the Act.

The tenants provided a notice to the landlord on October 16, 2018 to end the tenancy after which they vacated on October 6, 2019. The earliest possible effective date for the tenant's notice to end this periodic tenancy pursuant to section 45 of the Act was November 30, 2019. I find the tenants did not provide sufficient notice to end the tenancy and as a result the landlord suffered a loss.

I find the landlord mitigated losses by relocating a tenant from an existing unit into the more expensive unit. The tenants' argument that the landlord did not have to do this is unreasonable as by doing so the landlord only reduced the tenants' liability. It is unlikely the landlord would have got a new tenant in the unit as quickly as he did had he not relocated an existing tenant and waited to secure a new tenant. I accept the landlord's testimony that they suffered a loss of rent up until November 30, 2019 as a result of the 1-bedroom remaining vacant for this period.

I accept the landlord's claim for loss of rent for October and November 2019 as calculated in the total amount of **\$2453.17** (October 2019: \$774.16 + \$1354.01 - \$1500.00; November 2019: \$1825.00).

As per section 7 of the *Residential Tenancy Regulation* the landlord may charge an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent if provided for in the tenancy agreement.

I accept the landlord's claim for **\$25.00** late fee for October 2019 as the tenants failed to pay the rent in full for this month. I also accept the landlord's claim for move-out charges in the amount of **\$150.00** as provided for in the tenancy agreement.

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 **\$2728.17** (\$2453.17 + \$25.00 + \$150.00 + \$100.00).

The landlord continues to hold a security deposit and pet deposit in the amount of \$1500.00. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of \$1228.17.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$1228.17**. 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: March 05, 2020

Residential Tenancy Branch