



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Code MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act (the “Act”), for a monetary order for loss of rent, for an order to retain the security deposit in partial satisfaction of the claim and to recover the filing fee.

The landlords attended the hearing. As the tenants 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 respondents must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlords testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail on December 18, 2019, to the address provided by the tenant which was in a different country. The landlords stated that the Canada post tracking number show that the packages were successfully delivered on December 24, 2019. I find the tenants were served on December 24, 2019, in accordance with the Act.

The landlords 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.

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

Are the landlords entitled to a monetary order for unpaid rent?

Are the landlords 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, 2020. Rent in the amount of \$1,400.00 was payable on the first of each month. The tenants paid a security deposit of \$700.00. The tenancy ended on November 28, 2019.

The landlords testified that the tenants breached the fixed term tenancy when they gave notice to end the tenancy on October 29, 2019 with an effective vacancy date of November 28, 2019.

The landlords testified that they started advertising the premise for rent on November 3, 2019, on several popular websites; however, they were unable to find a tenant. The landlords stated that December and January are months that tenants do not want to move and are difficult months to rent. The landlord stated that since the corona virus was announced they have had little activity on the rental premise, and they have lowered the rent. The landlords seek to recover loss of rent for December 2019, January and February 2020 in the amount of **\$4,200.00**.

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 landlords have 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,

...

I accept the undisputed testimony of the landlords that the tenants breached the fixed term tenancy by ending the tenancy on November 28, 2019. However, under the Act the tenants were not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement. I find the tenants have 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.

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

However, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

I accept the undisputed evidence of the landlords that they commenced advertising the rental unit on November 2, 2019 and were unable to find a new renter for December 2019, and January 2020, due to the time of the year. I am also satisfied that the landlords have had very little activity for the subject rental unit, even after they

decreased the rent, due to the corona virus and the state of emergency that has been issue.

I find the landlords made reasonable efforts to minimize the loss. Therefore, I find the landlords are entitled to recover loss of rent for December 2019, January, February 2020, in the amount of **\$4,200.00**.

I find that the landlords have established a total monetary claim of **\$4,300.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlords retain the security deposit of **\$700.00** in partial satisfaction of the claim and I grant the landlords an order under section 67 of the Act for the balance due of **\$3,600.00**.

This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **tenants are cautioned** that costs of such enforcement are recoverable from the tenant.

Conclusion

The landlords are granted a monetary order and may keep the security deposit in partial satisfaction of the claim and the landlords are 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: May 1, 2020

Residential Tenancy Branch