



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 loss of rent and unpaid utilities, for other money owed, to keep all or part of the security deposit and to recover the cost of the filing fee.

The landlord and the tenant L.T. attended, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing the hearing.

Preliminary and procedural matters

Service

As the tenant M.C did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

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

The landlord testified that they were unable to serve the tenant M.C. As the tenant M.C. was not served in accordance with the Act, I find this hearing will only proceed against the tenant L.T.

Evidence

At the outset of the hearing it was confirmed that the landlord did not serve their evidence on the tenant. While a copy of their evidence was filed with the Residential

Tenancy Branch, I find I cannot consider the evidence as it would be unfair and prejudicial to the tenant. Therefore, I have excluded the landlord's evidence.

Issues to be Decided

Is the landlord entitled to a monetary order for loss of rent and unpaid utilities?

Is the landlord entitled to monetary compensation for other money owe?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The parties agreed that they entered into a one year fixed term tenancy which began on October 1, 2019 and was to expire on December 1, 2020. Rent in the amount of \$2,400.00 was payable on the first of each month. The tenant paid a security deposit of \$1,200.00. The tenancy ended on November 28, 2019.

The landlord claims as follows:

a.	Loss of rent for December 2019 & January 2020	\$4,800.00
b.	Difference between two rent	\$1,100.00
c.	Unpaid utilities	\$ 92.31
d.	Two trips to rental unit	\$1,000.00
e.	Filing fee	\$ 100.00
	Total claimed	\$7,092.31

Loss of rent for December 2019 & January 2020

The landlord testified that on November 4, 2019, they received a text message from the tenant stating that their co-tenant M.C had moved out of the rental unit and they could not afford the rent. The landlord stated that the tenant informed them by text message on November 13, 2019, that they had found alternate accommodation and would be vacating shortly.

The landlord testified that on November 28, 2019, the tenant vacated the premise breaching the fixed term agreement. The landlord stated that they did their best to find a suitable tenant. The landlord stated they advertised the premise on several popular websites, and they went to many establishments, such as the hospital to post advertisements.

The landlord testified that due to the short notice and to the time of the year they were unable to find a new renter for the months of December 2019 and January 2020. The landlord seeks to recover loss of rent in the amount of \$4,800.00.

The tenant testified that it was the fault of M.C. that they had ended the relationship and vacating the premise, leaving them responsible to pay the rent. The tenant stated that they could not afford to pay the rent on their own, so they had no choice but vacate the premise.

The tenant testified that the co-tenant M.C. was willing to enter into a new tenancy agreement with the landlord, if they were removed from the lease; however, the landlord was not willing to enter into an agreement with M.C. The tenant stated that it unfair that they are being the only one accountable.

The landlord argued that they were not prepared to enter into any agreement with the tenant M.C. The landlord stated the M.C. gave false information about their finances and was not a reliable tenant. The landlord stated they have no choice but to proceed against the tenant as M.C. has moved out of province and has not provided a forwarding address.

Difference between two rent

The landlord testified that they were able to find a new renter in February 2020; however, they negotiated a lower rent of \$2,300.00. The landlord stated that they seek to recover the difference between what the defaulting tenant was to pay and what is due by the new tenant. The landlord seeks to recover the different of loss rent in the amount of \$1,100.00.

The tenant testified that because the landlord accepted a new tenant at a lower rent, that should not be their issue and they should not be responsible for the difference.

Two trips to rental unit

The landlord testified that they had to make two trips to the rental unit. The first trip was on November 29, 2019, as the tenant had vacated the premise on November 28, 2019, leaving the keys inside. The second trip was on January 5, 2020 to clean the rental unit, and they had to pay for gas, food and they and some family members spent over eight hours cleaning.

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.

Loss of rent for December 2019 & January 2020

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 find the tenant breached the Act, when they vacated the premises on November 28, 2019, ending the tenancy. Under the Act the tenant was not entitled to give notice to end the tenancy prior to the date specified in the tenancy agreement.

The evidence of the tenant was that the landlord could have entered into a new tenancy with M.C; however, the landlord did not want to. I do not find the landlord's position unreasonable, as M.C. had already abandoned the premise, this showing that M.C. is not a reliable or responsible tenant.

In this matter, the landlord advertised the rental unit and placed advertisement around the community and was unable to find a new renter due to short notice given by the tenant and the time of the year. I find the landlord made reasonable efforts to mitigate the loss. I find the tenant is responsible for loss of rent for December 2019 and January 2020, in the total amount of **\$4,800.00**.

Difference between two rent

The landlord seeks to recover the difference between the two rents. The defaulting tenants rent was \$2,400.00 and the new renters rent was \$2,300.00. However, I find the landlord has not provided sufficient evidence in support of their claim as a copy of the new tenant's tenancy agreement was not provided. The landlord's documentary evidence was excluded. Therefore, I dismiss this portion of the landlord's claim.

Unpaid utilities

I find the landlord has failed to provide sufficient testimony on this issue. Further, as the landlord's evidence was excluded there is no way for me to determine if the cost is appropriate. Therefore, I dismiss this portion of the landlord's claim due to insufficient evidence.

Two trips to rental unit

The landlord is seeking compensation for two trips to the rental unit. However, I find the landlord is not entitled to travel costs as it is a personal choice to rent property that is not within their geographical area.

While the landlord may have been entitled to reasonable cleaning cost and supplies. That was not the claim before me. Under section 59 of the Act, the full particulars of the claim must be in the application. Therefore, I dismiss this portion of the landlord's claim.

I find that the landlord has established a total monetary claim of **\$4,900.00** comprised of the above described amount and the \$100.00 fee paid for this application.

I order that the landlord to retain the security deposit of **\$1,200.00** in partial satisfaction of the claim and I grant the landlord an order under section 67 of the Act for the balance due of **\$3,700.00**.

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: June 10, 2020

Residential Tenancy Branch