



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

On May 4, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for unpaid rent; for damage to the unit; to keep the security deposit; and to recover the cost of the filing fee.

On June 16, 2020, the Tenant submitted an Application for Dispute Resolution under the *Act* for the return of a security deposit and or pet damage deposit; and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference.

At the start of the hearing I introduced myself and the participants. The Landlord and Tenant provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they have exchanged the documentary evidence that I have 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 for unpaid rent?
- Is the Landlord entitled to keep the security deposit and pet damage deposit towards the claim for unpaid rent?
- Is the Tenant entitled to the return of the security deposit and pet damage deposit?

- Is the Tenant entitled to money owed or compensation for damage or loss?

Background and Evidence

The Landlord and Tenant testified that the tenancy began January 1, 2020 as a six-month fixed term tenancy. Rent in the amount of \$1,500.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit in the amount of \$750.00 and a pet damage deposit in the amount of \$750.00. The parties testified that the tenancy ended on March 28, 2020 when the Tenants vacated the rental unit.

Loss of Rent \$3,000.00

The Landlord testified that the Tenant broke the fixed term tenancy agreement by vacating the unit on March 28, 2020 prior to the end of the term and failing to pay the rent owing under the agreement for April 2020 and May 2020.

The Landlord testified that he began advertising the rental unit on a local website starting March 28, 2020. The Landlord testified that he advertised the unit at a monthly rent of \$1,600.00 for a fixed term tenancy of one year. He testified that he listed it for more rent than the Tenant was paying because the unit had been rented at a low market rent. The Landlord provided a copy of an advertisement for the rental unit placed on a website on March 28, 2020. The Landlord also provided a copy of an advertisement for the rental unit where at the end of April he advertised the monthly rent at \$1,650.00 per month.

The Landlord testified that he was not able to find a Tenant to rent the unit for April 2020 and May 2020 and he is seeking to recover a loss of rent in the amount of \$3,000.00. The Landlord stated that the Covid 19 pandemic was likely a factor in his ability to re-rent the unit.

In reply, the Tenant testified that after she reported a leak in the unit to the Landlord, he attended the unit without social distancing and became very angry with her. The Tenant testified that the Landlord was yelling, and she was feeling afraid so asked him to leave the unit.

The Tenant provided testimony that she decided to find another place and she moved out of the rental unit. She stated that she feared for her safety. She testified that she filed a disturbance report with the police.

The Tenant testified that she placed an advertisement for the rental unit on a local website at \$1,500.00 and received responses from interested parties.

The Tenant testified that she does not feel responsible to pay compensation to the Landlord. She testified that at the start of the tenancy the Landlord had told her he would not hold her to the contract if she ever wanted to leave. The Tenant stated that she provided a recording of the conversation.

The Landlord replied that the Tenant never forwarded any interested parties/ potential Tenants to him.

Tenants Claim for Compensation \$1,500.00

The Tenant is seeking to be compensated by the Landlord for costs associated to this dispute. She stated that the Landlord was hostile and abusive towards her and she was forced to move out. She stated that the Landlord told her that she could not live there anymore. She testified that compensation is for movers; car rental; gas, printing; and photos.

The Tenant provided testimony confirming that she never received a notice to end tenancy from the Landlord.

In reply, the Landlord testified that the Tenant's claim for compensation seems ludicrous and the claim speaks to her credibility.

Security Deposit

On May 4, 2020 the Landlord applied to keep the security deposit of \$750.00 and pet damage deposit of \$750.00 in partial satisfaction of his claim for the loss of rent. The Landlord used the Tenant's email address for service of the Notice of Dispute Resolution Proceeding.

On June 16, 2020 the Tenant applied for the return of the security deposit and pet damage deposit. The Tenant testified that she provided her forwarding address to the Landlord on May 11, 2020 using email. The Tenant testified that she had her residential mail forwarded through Canada Post.

The Landlord provided testimony confirming he received the Tenant's forwarding address on May 11, 2020.

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.

...

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Based on the evidence before me, the testimony of the Landlord and Tenant, and on a balance of probabilities, I make the following findings:

Loss of Rent

I find that the Tenant did not have a legal right under the Act to end the fixed term tenancy on short notice. There is insufficient evidence from the Tenant to establish that the Landlord breached a material term of the contract that entitled the Tenant to end the tenancy. I also find that there is insufficient evidence from the Tenant that there was an agreement between the parties that the Landlord would not hold her to the fixed term contract.

The Landlord is seeking compensation of \$3,000.00 for a loss of two months' rent. The Landlord must take steps to mitigate or minimize the loss being claimed. I find that the Landlord immediately advertised the rental unit; however, I find that he advertised the rental unit at monthly rent of \$1,600.00 an increase of \$100.00. I find that the increase in rent is not a reasonable decision in an attempt to find a new Tenant. However, I find that the Tenant moved out of the rental unit on March 28, 2020 with very little notice to the Landlord. I find that the short notice contributed the Landlord's ability to find a new Tenant for April 1, 2020. In this circumstance, I find that the Tenant is responsible to pay the Landlord the rent owing under the tenancy agreement for the month of April 2020.

With respect to May 2020 rent, I find that the Landlord advertised the rental unit at \$1,650.00 per month. I find that the Landlord failed to take reasonable steps to mitigate against the loss of May 2020 rent when he again increased the monthly rent. I find that the Landlord's claim for a loss of May 2020 rent fails.

I award the Landlord \$1,500.00 for the loss of April 2020 rent.

Tenant's Claim for Compensation

I have found that the Tenant did not have a legal right under the Act to end the fixed term tenancy on short notice. Since I find that the Landlord has not breached the Act, the Landlord is not responsible to compensate the Tenant for her decision to vacate the rental unit prior to the end of the fixed term tenancy.

The Tenant's claim for compensation is dismissed.

Security Deposit

I find that the Landlord made a claim against the security deposit and pet damage deposit within 15 days of receiving the Tenant's forwarding address in writing. The deposits will apply towards any monetary awards granted to the Landlord.

Section 72 of the Act also gives me authority to order the repayment of a fee for an application for dispute resolution. The tenant was not successful with her application, I decline to award the recovery of the filing fee.

I find that the Tenant owes the Landlord the amount of \$1,500.00 for a loss of April 2020 rent. I authorize the Landlord to retain the amount of \$1,500.00 from the security deposit and pet damage deposit in full satisfaction of the claim.

Conclusion

The Landlords was partially successful with his claim for a loss of rent and to keep the security deposit and pet damage deposit. I authorize the Landlord to retain the amount of \$1,500.00 from the deposits for a loss of April 2020 rent.

The Tenant was not successful with her claim for money owed or compensation for damage or loss under the Act, regulation, or tenancy agreement.

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: September 8, 2020

Residential Tenancy Branch