



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the Act) for:

- 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 recover her 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 landlord served the tenant with the notice of hearing package and the submitted documentary evidence via email. Both parties confirmed the landlord served a total of 3 documentary evidence package(s) of which the last one was served late on September 3, 2020. The tenant stated that although she received the last package late, there was no issue in responding to it and proceeding with the hearing. Both parties also confirmed the tenant served the landlord with the submitted documentary evidence via regular mail on August 18, 2020. I accept the undisputed affirmed evidence of both parties and find that both parties have been sufficiently served and are deemed served as per section 90 of the Act.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for money owed or compensation and recovery of the filing fee?

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.

Both parties confirmed that this tenancy began on September 1, 2019 with monthly rent at \$1,550.00 and a \$775.00 security deposit paid. Both parties confirmed that the tenant forfeited her \$775.00 security deposit to pay for ½ of the April 2020 monthly rent.

The landlord seeks a monetary claim of \$875.00 which consists of loss of rent of \$775.00 for ½ of April 2020 rent and recovery of the \$100.00 filing fee.

The landlord stated that the tenant gave improper notice to end the tenancy on March 4, 2020 via email to vacate the rental unit by the end of March 2020. The tenant provided undisputed affirmed evidence that she moved out on March 27, 2020.

The landlord stated that she immediately attempted to re-rent the unit by advertising it online beginning March 4, 2020. The landlord stated that no inquires/interest were made to rent the unit. The landlord also cited personal issues regarding her age, her mortgage, the difficulty in moving, the cost of moving and ended her own rental tenancy to move into the rental unit. Both parties confirmed that the landlord moved into the rental unit at the end of March 2020.

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.

I accept the undisputed affirmed evidence of both parties that the tenant gave notice to end the tenancy on March 4, 2020 for the end of March 2020. The tenant provided undisputed affirmed testimony that she vacated the rental unit on March 27, 2020. The landlord provided undisputed affirmed testimony that she moved into the rental unit at the end of March 2020. On this basis, I find that the landlord has failed to satisfy me that she suffered a loss of rent for April of \$775.00 equal to ½ of the monthly rent.

Residential Tenancy Branch, Policy Guideline #5, Duty to Minimize Loss states in part,

Under section 7 of the Residential Tenancy Act (RTA) and Manufactured Home Park Tenancy Act (MHPTA), if a landlord or tenant does not comply with the Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for resulting damage or loss.

A landlord or tenant claiming compensation for damages or loss has a legal obligation to do whatever is reasonable to minimize the damage or loss.

B. REASONABLE EFFORTS TO MINIMIZE LOSSES

A person who suffers damage or loss because their landlord or tenant did not comply with the Act, regulations or tenancy agreement must make reasonable efforts to minimize the damage or loss. Usually this duty starts when the person knows that damage or loss is occurring. The purpose is to ensure the wrongdoer is not held liable for damage or loss that could have reasonably been avoided.

In general, a reasonable effort to minimize loss means taking practical and common-sense steps to prevent or minimize avoidable damage or loss. For example, if a tenant discovers their possessions are being damaged due to a leaking roof, some reasonable steps may be to:

- remove and dry the possessions as soon as possible;*
- promptly report the damage and leak to the landlord and request repairs to avoid further damage;*
- file an application for dispute resolution if the landlord fails to carry out the repairs and further damage or loss occurs or is likely to occur.*

Compensation will not be awarded for damage or loss that could have been reasonably avoided...

Loss of Rental Income

When a tenant ends a tenancy before the end date of the tenancy agreement or in contravention of the RTA or MHPTA, the landlord has a duty to minimize loss of rental income. This means a landlord must try to:

- 1. re-rent the rental unit at a rent that is reasonable for the unit or site; and*
- 2. re-rent the unit as soon as possible...*

In this case after initially advertising the rental unit online for rent on March 4, 2020, the landlord provided undisputed testimony that there was no interest in the rental. The landlord then chose to end her own tenancy and move into the rental unit at the end of March 2020. I find that there is no expectation of loss of rent for April 2020 if the landlord is occupying it. The landlord's monetary claim has been unsuccessful.

Conclusion

The landlord's application is dismissed without leave to reapply.

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 08, 2020

Residential Tenancy Branch