



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

On May 11, 2020, the Landlords submitted an Application for Dispute Resolution under the Residential *Tenancy Act* (“the Act”) for a monetary order for unpaid rent; for money owed or compensation for damage or loss; to keep the security deposit; and to recover the cost of the filing fee. On August 26, 2020 the Landlord amended the application to increase the amount being claimed to \$4,260.16.

The matter was set for a conference call hearing at 1:30 p.m. on this date. The Landlord and Tenant attended the teleconference hearing.

The Landlords and Tenants were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The Landlords and Tenants confirmed that they exchanged the documentary evidence 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.

Preliminary and Procedural Matters

During the hearing the parties testified that they reached an agreement during the tenancy that the Landlord could keep the security deposit of \$1,900.00 towards April 2020 rent. Since an agreement was reached regarding the security deposit, the Landlords claim to keep the deposit is not required and is dismissed.

During the hearing the Landlord withdrew the monetary claim regarding unpaid utilities for May to August 2020. The Landlords claim for utilities is dismissed.

Issues to be Decided

- Are the Landlords entitled to a monetary order to recover unpaid rent?
- Are the Landlords entitled to money owed or compensation for damage or loss under the Act?

Background and Evidence

The Landlords and Tenants testified that the tenancy began on September 1, 2019, as a one-year fixed term tenancy agreement. Rent in the amount of \$3,800.00 was to be paid to the Landlords by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,900.00. The parties testified that all the Tenants had vacated the rental unit by the end of April 2020. The Landlord provided a copy of the tenancy agreement.

Loss of Rent

The Landlord testified that the Tenants vacated the rental unit prior to the end of the fixed term tenancy agreement.

The Landlord testified that the Tenants did not pay all the rent owing under the tenancy agreement for the month of April 2020. The Landlord testified that the Tenants still owe \$725.00 for April 2020.

The Landlord submitted that the Tenants are responsible to pay the rent owing under the tenancy agreement until the end of August 2020. The Landlord testified that he began advertising the rental property on local websites starting April 8, 2020. The Landlord testified that he advertised the rental property at the same rent of \$3,800.00 per month. The Landlord testified that it was proving difficult to rent the house due to the Covid pandemic. On April 27, 2020 the Landlord decided to rent the property out on a room by room basis. The Landlord provided copies of inquiries he received regarding the rental advertisement.

Rent owing under the fixed term tenancy agreement from May to August 2020 amounts to \$15,200.00. Adding the \$725.00 owing for April 2020 amounts to \$15,925.00.

The Landlord testified that from April 27, 2020 to August 31, 2020 he received rental income of \$8,008.00 for the room by room rentals. The Landlord provided a payment ledger providing the amounts he received as follows:

Month	Amount Received	Rent Owing
May 2020	\$550.00	\$3,250.00
June 2020	\$2,333.00	\$1,467.00
July 2020	\$2,700.00	\$1,100.00
August 2020	\$2,425.00	\$1,375.00
Totals	\$8,008.00	\$7,192.00

In reply, the Tenants provided testimony agreeing that the amount of \$725.00 is owing for April 2020 rent. The Tenants testified that they did not pay any rent to the Landlord for the months of May, June, July and August 2020.

The four Tenants present provided testimony on the reasons why they vacated the rental unit prior to the end of the fixed term. The reasons included losing jobs and income / funding due to the covid 19 pandemic and moving back home with family.

Ms. H.B testified that she saw the Landlord's advertisement for the rental property and feels that it was misleading because it is a three-bedroom house and the Landlord rents it out at a high monthly rent.

Ms. E.C. stated that she applied for a rental supplement and was informed that her application would be approved.

Ms. H.B. submitted that due to the covid 19 pandemic the tenancy may be considered to be frustrated.

In reply, the Landlord testified that he never received any amount of rental supplement from the government on behalf of any of the Tenants.

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. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of 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.

Section 7 of the Act provides if a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Residential Tenancy Branch Policy Guideline #34 Frustration provides the following information:

A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.

The test for determining that a contract has been frustrated is a high one. The change in circumstances must totally affect the nature, meaning, purpose, effect and consequences of the contract so far as either or both of the parties are concerned. Mere hardship, economic or otherwise, is not sufficient grounds for finding a contract to have been frustrated so long as the contract could still be fulfilled according to its terms.

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

I find that the tenancy agreement/ contract was not frustrated because of the covid 19 pandemic. The hardship and economic factors present for the Tenants is not sufficient to find the contract is frustrated.

I find that the Tenants ended the fixed term tenancy early and are responsible to pay the rent owing under the tenancy agreement until the end of the fixed term or until such time as the rental unit was re-rented.

I have considered whether or not the Landlord mitigated against the loss of rent by re-renting the unit at a reasonable rent.

I find that the Landlord advertised the rental unit for twenty days before deciding to rent the property on a room by room basis. I find that the Landlord was renting rooms for approximately \$550.00 each month. I note that if all five rooms were rented the Landlord would receive \$2,750.00 each month. I find that the highest amount of rent the Landlord would receive is \$1,050.00 less than the \$3,800.00 owing under the tenancy agreement.

I have considered whether or not it was reasonable for the Landlord to abandon his attempts to rent the unit out for \$3,800.00 after only 20 days of advertising. I find that when the Landlord decided to rent the residential property on a room by room basis, he was giving up any opportunity to recover the full amount of rent owing under the fixed term tenancy agreement. A rent shortfall that he wants the Tenants to be responsible to pay.

I am mindful that the Landlord could have continued to advertise the rental unit and if a new tenant was not found the Tenants would have been responsible to pay the rent. This may have resulted in a monetary claim for a loss of rent until the end of the fixed term. However, I am also mindful that continuing to advertise the rental unit for more than 20 days may have resulted in the Landlord finding a new Tenant(s) to pay the entire rent owing.

The Landlord rented the property out room by room and I find that this was mitigation against loss of rent; however, I am not satisfied that the Landlord's actions were entirely reasonable. I find that the Landlord's decision to abandon the attempt to rent the entire property for \$3,800.00 after 20 only days was premature. As of April 27, 2020, the Landlord put the Tenants in a position of owing a rent shortfall each month.

I am mindful that it is unlikely that the Landlord would have found a new Tenant(s) to take over the property starting May 1, 2020. Based on this, I find that the Tenants owe the rent owing under the tenancy agreement for the month of May 2020.

I find that the Landlord's actions of abandoning attempts to rent the unit after only 20 days is not reasonable, and therefore the Landlords claim to recover the shortfall of rent received for June, July and August 2020 is dismissed.

I award the Landlord the amount of \$3,800.00 for a loss of May 2020 rent and \$725.00 for unpaid April 2020 rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenants to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$4,625.00 comprised of \$4,525.00 for unpaid rent and the \$100.00 fee paid by the Landlord for this hearing.

I grant the Landlord a monetary order in the amount of \$4,625.00. This monetary 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 Tenants.

Conclusion

The Tenants ended the fixed term tenancy early and are responsible to pay rent owing under the tenancy agreement.

The Landlord has established a monetary claim for unpaid rent in the amount of \$4,625.00. I grant the Landlord a monetary order in the amount of \$4,625.00.

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 30, 2020

Residential Tenancy Branch