



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FFL

Introduction

On June 02, 2020, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; to keep the security deposit, and to recover the filing fee.

The matter was set for a conference call hearing. The Landlord and Tenant attended the teleconference hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by each party. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

Preliminary and Procedural Matters

The Tenant testified that she received the Landlord’s documentary evidence via email on September 22, 2020 which is late, and she did not have a full opportunity to consider and respond to it. She requested that the Landlord’s evidence be excluded.

The Landlord testified that she sent a copy of her documentary evidence to the Tenant’s email address on September 14, 2020.

Residential Tenancy Branch Rules of Procedure require that an applicant provide their evidence to a respondent at least 14 days prior to a hearing.

I find that the Landlord’s evidence was not served in accordance with the timelines required within the Rules of Procedure. Since the respondent testified that she has not

had an opportunity to consider and respond to the evidence, the Landlords evidence is excluded from the hearing.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Can the Landlord keep the security deposit towards their claims?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on June 1, 2019 as a one-year fixed term tenancy to end on May 31, 2020. Rent in the amount of \$1,425.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$712.50.

The Landlord testified that the Tenant did not give proper written notice to end the tenancy and is responsible to pay the rent for June 2020. The Landlord testified that on May 12, 2020 she received notice from the tenant that she was vacating the rental unit. The Landlord testified that the tenant vacated on or before May 31, 2020.

The Landlord testified that she placed rental advertisements on local websites. The Landlord is seeking a monetary order for unpaid rent in the amount of \$1,425.00. The Landlord is seeking to keep the security deposit of \$712.50 in partial satisfaction of her claim.

In reply, the Tenant provided affirmed testimony confirming that she gave notice to end the tenancy on May 12, 2020.

The Tenant submitted that she believes the Landlord was not diligent in her efforts to advertise and find a new Tenant for the month of June 2020.

Security Deposit

The Landlord applied to keep the security deposit of \$712.50 in partial satisfaction of the claim for unpaid rent.

Analysis

Residential Tenancy Policy Guideline # 5 Duty to Minimize Loss provides the following information:

Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

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.

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

The Tenant did not give proper written notice to end the tenancy. The earliest date that the Tenant could legally end the tenancy was June 30, 2020.

The Tenant is responsible to pay the rent for June 2020 which is the earliest date the tenancy could legally end.

Since the fixed term tenancy had ended, the tenancy automatically continued on a month to month basis. The Landlord was not required to try and rent the unit for a date earlier than June 30, 2020.

I award the Landlord a monetary award of \$1425.00 for a loss of June 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 Tenant 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 \$1,525.00 comprised of \$1,425.00 for June 2020 rent and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$712.50 towards the award of \$1,525.00 I find that the Landlord is entitled to a monetary order in the amount of \$812.50. This monetary 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 Tenant ended the tenancy early without the required amount of written notice. The earliest date that the Tenant could legally end the tenancy was June 30, 2020. The Tenant is responsible to pay the rent for June 2020.

I order that the Landlord can keep the security deposit in the amount of \$712.50 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order in the amount of \$812.50.

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 29, 2020

Residential Tenancy Branch