



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, for an order to retain the security deposit in partial satisfaction of the claim and to recover the cost of the filing fee.

Preliminary and Procedural matters

The landlord and the landlord’s agent appeared. The tenant named in the application did not attend. YW through their interpreter stated that they are the mother of the named tenant and they are also a tenant under the tenancy agreement; however, the landlord only listed their daughter in their application. YW stated that they should be added to the style of cause as a respondent.

The landlord’s agent stated that they did not add YW to the style of cause only because the other tenants english was better.

In this case, I find it appropriate to add YW as a respondent in the landlord’s application. I do not find it prejudicial to the landlord as YW was a tenant under the tenancy agreement, which is the subject of today’s hearing.

The landlord’s agent confirmed at the hearing that the only evidence they are relying upon is the signed tenancy agreement. The agent stated they have not received any evidence from the tenants. The tenant indicated that their evidence was sent to the landlord on October 2, 2020, by express post. As the landlord has stated they have not received the tenants’ evidence and it was not provided to the landlord within the required time limit under the Residential Tenancy Branch Rules of Procedure, I find I must exclude the tenants evidence from this hearing.

Both parties 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.

It should be noted that all evidence of the tenant YW was present through their interpreter.

I have reviewed all evidence and testimony before me that met the requirements of the rules of procedure. I refer only to the relevant facts and issues in this decision.

Issues to be Decided

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

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 fixed term tenancy which began on September 1, 2019 and was to expire on August 31, 2020. Rent in the amount of \$2,000.00 was payable on the first of each month. The tenants paid a security deposit of \$1,000.00. The tenants vacated the property on April 30, 2020.

The landlord's agent testified that the tenants did not give them formal notice to end the tenancy; however, they vacated the premise on April 30, 2020. The agent stated they did not make any effort to find a new renter because the tenants did not end their tenancy properly and could have come back anytime. The landlord seeks to recover loss of rent from May 2020 to August 2020, in the amount of \$8,000.00.

The tenant testified that since January 2020, they were in discussions with the landlord and the landlord's daughter regarding moving from the premise. The tenant stated that it was on March 14, 2020, they gave the landlord written notice that they would be vacating on April 30, 2020, which was sent by email.

The tenant testified that they were trying to find a new renter to take over the lease, by advertising. The tenant stated that on March 19, 2020, they showed the rental unit to a potential renter and a meeting was arranged between the landlord and the potential renter. The tenant stated that the landlord met with the potential renter on March 20, 2020; however, they were told by the potential renter that the landlord wanted a higher rent, which they were not prepared to pay.

The landlord's agent argued that they met with a potential renter on March 20, 2020. The agent stated that they informed the potential renter that rent would be the same as what the tenant was paying. The agent stated that they believe these people were just friends of the tenants and not really interested in the property.

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.

Where one party provides a version of events in one way, and the other party provides an equally probable version of events, without further evidence, the party with the burden of proof has not met the onus to prove their claim and the claim fails.

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.

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,

...

In this case, I do not accept the landlord's version that they had no prior knowledge that the tenants were vacating the premise on April 30, 2020. While I accept email is not an approved method to end the tenancy, I accept the evidence of the tenant over the landlord's agent as it is more logically that the landlord knew on March 14, 2020 that they would be vacating, as it would be unreasonable for the landlord to be interviewing a potential renter on March 20, 2020.

I accept that the tenants vacated the premises on April 30, 2020, ending their tenancy. However, under the Act the tenants were not entitled to end their tenancy prior to the date specified in the tenancy agreement, which was August 31, 2020. I find the tenants have breach section 45(2) of the Act.

However, I do not accept the landlord's agent evidence that they could not mitigate the loss because they had not received proper written notice from the tenants and had to wait for the expiry of the fixed term, which was four months later. This is unreasonable and is not supported by section 44(1)(d) of the Act, which states the **tenancy ends if the tenant vacates** or abandons the rental unit. Which in this case the tenants vacated the premise.

While in most cases the landlord is entitled to be in the same position as if the tenant had not breached the Act; however, under section 7(2) of the Act, the party who claims compensation for loss that results from the non-complying party must do **whatever is reasonable to minimize the loss**. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

In this matter, the evidence before me, was the landlord did nothing to mitigate the loss and simply waited for the fix term tenancy agreement to expire. I find the landlord has failed to take appropriate steps to minimize the loss as they should have advertised the premise for rent as soon as they were aware the tenants were vacating, which they clearly knew on March 20, 2020, or at the very least, shortly after the tenants vacated the property on April 30, 2020.

Therefore, as the landlord made no attempt to mitigate, I dismiss the landlord's claim for loss of rent without leave to reapply. As the landlord was not successful with their application, I decline to award the cost of the filing fee.

As the landlord has no legal authority to continue to hold the security deposit of \$1,000.00, I order the landlord to return the security deposit to the tenants forthwith. I

grant the tenants a monetary order pursuant to 67 of the Act. Should the landlord fail to comply with my order. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court. The **landlord is cautioned** that costs of such enforcement are recoverable from the **landlord**.

Conclusion

The landlord application is dismissed without leave to reapply. The tenants are granted a monetary order for the return of their security deposit.

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: October 09, 2020

Residential Tenancy Branch