



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD

Introduction

On August 10, 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. 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 to recover unpaid rent?
- Can the Landlords keep the security deposit towards their claim?
- 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 December 1, 2018 as a one-year fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,850.00 was to be paid to the Landlord by the first day of each month. The Tenant paid the Landlord a security deposit of \$925.00. The Landlord and Tenant provided a copy of the tenancy agreement.

The Landlord testified that the Tenant ended the tenancy without giving the amount of notice required under the Act. The Landlord testified that on July 1, 2020 the Tenant gave written notice to end the tenancy for July 31, 2020.

The Landlord testified that she was not able to find a tenant to rent the unit for August 1, 2020. The Landlord testified that she found a new Tenant to rent the unit starting August 15, 2020 and she incurred a loss of August 2020 rent.

The Landlord testified that she arranged four showings of the unit and that it was difficult to find someone due to covid 19.

The Landlord stated that she is willing to lower her claim against the Tenant to \$454.25 because the Tenant assisted in finding the new Tenant.

In reply, the Tenant testified that she was not aware that she had to give her notice to end tenancy the day prior to when the rent was due. She submitted that nine hours of delay in the Landlord receiving the notice did not impact the Landlord.

The Tenant testified that she showed goodwill by assisting the Landlord to find a new Tenant for the rental unit. She testified that she placed advertisements on six different websites and responded to numerous inquiries. She testified that she did all this to be helpful without any compensation.

The Tenant testified that on July 17, 2020, she showed the rental unit to a person who signed a 12-month lease on July 19, 2020.

The Tenant testified that she attended a move out inspection with the Landlord on July 31, 2020 and there were no concerns with damage to the unit. She submitted that at that time the Landlord announced that she wanted to claim against the security deposit.

The Tenant testified that she provided her forwarding address in writing to the Landlord on August 3, 2020.

The Tenant submitted that because she assisted the Landlord with finding a new tenant who signed a 12-month lease, and since the notice to end tenancy was received by the Landlord with only a nine-hour delay, the Tenant should not be responsible for the Landlord's loss of August rent.

Security Deposit

The Landlord testified that she received the Tenant's forwarding address on August 3, 2020. On August 10, 2020 the Landlord applied to keep \$454.25 from the security deposit in satisfaction of her claim for a loss of rent.

Analysis

Section 45 of the Act provides that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that:

- is not earlier than one month after the date the landlord receives the notice, and
- is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

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.

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:

I have reviewed the tenancy agreement and I find that rent is to be paid under the agreement by the first day of each month. I find that the Tenant gave written notice to end the tenancy on July 1, 2020. I find that the Tenant's notice to end the tenancy was not given in accordance with section 45 of the Act because it was not given the day before in the month that rent was due. I find that the earliest legal date that the Tenant could end the tenancy was August 31, 2020. The Tenant is obligated to pay the August 2020 rent due under the tenancy agreement.

I find that a Tenant was not found for the rental unit until August 15, 2020. The Landlord received \$975.00 from the new tenant. I find that the Landlord suffered a loss of rental income in the amount of \$875.00.

I find that the Tenant breached the Act by giving improper notice to end the tenancy and is responsible to put the Landlord in the same position as if the Tenant had not breached the Act. The Landlord is entitled a loss of rent due under the tenancy agreement.

I find that the assistance the Tenant provided the Landlord in finding a new tenant was helpful and likely lessened the monetary claim against her; but it does not reduce her responsibility to pay for the loss of rent incurred by the Landlord.

While I find that the Landlord is entitled to compensation of \$875.00, the Landlord is only seeking compensation of \$454.25.

The Landlord applied against the security deposit in accordance with section 38 of the Act by applying against the security deposit within 15 days of receiving the Tenant's forwarding address.

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 authorize the Landlord to keep \$554.25 from the \$925.00 security deposit for the loss of rent and the filing fee. I order the Landlord to return the balance of \$370.75 to the Tenant. I grant the Tenant a monetary order for \$370.75.

Conclusion

The Tenant failed to give proper notice to end the tenancy in accordance with section 45 of the Act. I find that the earliest date that the Tenant could legally end the tenancy was August 31, 2020. The Tenant is obligated to pay for any loss of August 2020 suffered by the Landlord.

I authorize the Landlord to keep \$554.25 from the 925.00 security deposit for the loss of rent and the filing fee. I order the Landlord to return the balance of \$370.75 to the Tenant. I grant the Tenant a monetary order for \$370.75.

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: November 30, 2020