



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on October 27, 2022. The Landlord applied for multiple remedies, pursuant to the *Residential Tenancy Act* (the "Act").

The Landlord attended the hearing and provided affirmed testimony. However, the Tenant did not appear. The Landlord testified that he sent the Notice of Dispute Resolution Proceeding and evidence package to the Tenant, via email, on March 14, 2022. The Landlord obtained an order for substituted service to serve the Tenant via email. Pursuant to that Order, I find the Tenant is deemed to have received the Notice of Dispute Resolution Proceeding and evidence 3 days after the email was sent to him.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

Issue(s) to be Decided

- Is the Landlord entitled to a monetary order for damage or loss under the Act, or for unpaid rent?
- Is the Landlord authorized to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38?

Background and Evidence

The Landlord provided a copy of the tenancy agreement into evidence. The Tenancy started on or around September 1, 2021, and was set for a 1 year fixed term. The Landlord holds a security deposit in the amount of \$1,700.00. Monthly rent was \$3,400.00 and was due on the first of the month.

The Landlord explained that on January 15, 2022, the Tenant provided notice, via email, that he was moving out within 10 days. Following this, the Landlord posted the ad to re-rent the unit on January 18, 2022, for the same price. The Landlord stated that the Tenant moved out and returned the keys on January 24, 2022. The Landlord stated they reminded the Tenant all along that he was under a fixed lease, and it was not acceptably to break the lease, without penalty.

The Landlord stated they were able to successfully re-rent the unit starting the middle of February 2022. The Landlord stated they only lost out on rent for the first half of February, amounting to \$1,700.00.

The Landlord stated he was initially seeking liquidated damages and a full month's rent, but since he was able to re-rent so quickly, he is only seeking half month's rent, to cover the first half of February when the unit was vacant. The Landlord requested to amend his application to reflect that he is only seeking to retain the deposit, and nothing beyond.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenant. Once that has been established, the Landlord must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I note the following portions of the *Act*:

***"tenancy"** means a tenant's right to possession of a rental unit under a tenancy agreement;*

How a tenancy ends

44 (1)A tenancy ends only if one or more of the following applies:

(a)the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i)section 45 [tenant's notice];

(i. 1)section 45.1 [tenant's notice: family violence or long-term care];

(ii)section 46 [landlord's notice: non-payment of rent];

(iii)section 47 [landlord's notice: cause];

(iv)section 48 [landlord's notice: end of employment];

(v)section 49 [landlord's notice: landlord's use of property];

(vi)section 49.1 [landlord's notice: tenant ceases to qualify];

(vii)section 50 [tenant may end tenancy early];

(b)the tenancy agreement is a fixed term tenancy agreement that, in circumstances prescribed under section 97 (2) (a.1), requires the tenant to vacate the rental unit at the end of the term;

(c)the landlord and tenant agree in writing to end the tenancy;

(d)the tenant vacates or abandons the rental unit;

(e)the tenancy agreement is frustrated;

(f)the director orders that the tenancy is ended;

(g)the tenancy agreement is a sublease agreement.

Tenant's notice

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, that rent is payable under the tenancy agreement.

(4)A notice to end a tenancy given under this section must comply with section 52 [form and content of notice to end tenancy].

Based on all of the above, the evidence and the testimony provided at the hearing, I find the Tenant breached section 45(2) of the Act by ending the tenancy prior to the end of the fixed term. I further find the Landlord sufficiently mitigated his losses, since he

reposted the ad a matter of days after getting notice from the Tenant. The Landlord was able to quickly re-rent the unit, and only suffered one half month's rental loss. I find the Tenant is liable for this amount, \$1,700.00.

I amend the Landlord's application, as he requested. The Landlord is granted permission to retain the security deposit, in full, in satisfaction of the money owed by the Tenant in the amount of \$1,700.00.

Conclusion

The Landlord is authorized to retain the \$1,700.00 security deposit, in full.

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 28, 2022

Residential Tenancy Branch