



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MND, MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for \$9,350.00 including rent owed for April 2011, loss of rent for May, June and July, cleaning costs and loss of rent for another unit in the building that the tenant occupied without the landlord's permission and an order to retain the security deposit in partial satisfaction of the claim.

Despite being served by registered mail sent on March 30, 2011, the tenant did not appear and the hearing proceeded in the respondent's absence.

Issue(s) to be Decided

The issue to be determined, based on the testimony and evidence, is whether or not the landlord is entitled to monetary compensation for rent, loss of rent and damages.

Preliminary Matter 1: Service of Applicant's Evidence

The landlord had submitted documentary evidence on file to support the landlord's claims. The evidence was received by Residential Tenancy Branch on July 4, 2011. However, according to the landlord, the tenant had vacated the unit sometime in April leaving no forwarding address. Therefore I find that the landlord was not able to confirm that the evidence submitted in support of the claim was properly served on the tenant.

The Residential Tenancy Rules of Procedure, Rule 3.1, requires that all evidence must be served on the respondent and Rule 3.4 requires that, to the extent possible, the applicant must file copies of all available documents, or other evidence at the same time as the application is filed or if that is not possible, at least (5) days before the dispute resolution proceeding.

If the respondent intends to dispute an Application for Dispute Resolution, Rule 4 states that copies of all available documents, photographs, video or audio tape evidence the respondent intends to rely upon as evidence at the dispute resolution proceeding must be received by the Residential Tenancy Branch and

served on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding.

If copies of the evidence are not served on the respondent or the applicant as required, and if the evidence is relevant, the Dispute Resolution Officer must decide whether or not accepting the evidence would prejudice the other party, or would violate the principles of natural justice.

The other party must be given an opportunity to review the unseen evidence before the application can be heard. This may necessitate a determination about whether or not the matter should be adjourned to a future date to allow service of the evidence.

I note that the *Landlord and Tenant Fact Sheet* contained in the hearing package also makes it clear that “*copies of all evidence from both the applicant and the respondent and/or written notice of evidence must be served on each other and received by RTB as soon as possible.*”

Given the above, I decline to accept or consider any evidence that was not properly served on the other party. However, verbal testimony from the landlord was considered.

Preliminary Matter 2: Parties included as Respondent

During the proceedings the landlord made a request that the application for a monetary order include another person who was apparently the guarantor for the tenant and a signee on the tenancy agreement.

I found that the application cannot be amended at this point to add a party not named in the original application and served with the Notice of Hearing as it would prejudice the proposed respondent who had no notice of such a claim. Accordingly, the landlord's request to amend the application to include the guarantor was denied.

Preliminary Matter 3: Tenant's Occupation of Additional Room

A portion of the landlord's claim for damages related to the tenant's alleged occupation of an additional room in the home without the landlord's knowledge or permission. The landlord's position was that the tenant should compensate the landlord for usage of this room for 8 months at \$700.00 per month.

Section 6 of the Act states that a party can make an application for dispute resolution seeking enforcement of the rights, obligations and prohibitions established under the Act or the tenancy agreement. Section 58 of the Act also

states that, except as restricted under the Act, a person may make an application for dispute resolution in relation to a conflict dealing with: (a) rights, obligations and prohibitions under the Act; OR (b) *rights and obligations under the terms of a tenancy agreement*. (My emphasis)

I find that, because the parties did not have a tenancy agreement with respect to room #1, the dispute relating to this room is not within my jurisdiction under the Act to determine. Accordingly the claim for \$5,000.00 relating to the tenant's occupation of room #1 must be dismissed. The application will proceed with respect to the dispute relating to room #5.

Background and Evidence

The landlord testified that the tenancy began in September 2010 and was for a fixed term that ended on August 31, 2011. The rent was \$650.00 and a security deposit of \$325.00 was paid. According to the landlord, the tenant moved out without notice sometime in April 2010. The landlord testified that move-in and move-out condition inspection reports had not been completed nor signed by the parties at the beginning and end of the tenancy.

The landlord testified that the tenant did not pay any rent for the month of April, which is being claimed by the landlord. The landlord is also claiming reimbursement of \$2,600.00 for loss of rent for the past 4 months of the fixed term tenancy, based on the fact that the room remained vacant despite efforts to re-rent it. A claim of \$200.00 is being made for the costs of cleaning the rooms left not reasonably clean by the tenant.

Finally, the landlord is claiming reimbursement of the \$100.00 cost of this application.

Analysis

Section 26 of the Act states that rent must be paid when it is due, under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement. I accept the landlord's verbal testimony that the tenant remained in the unit past April 1, 2011 and did not pay the \$650.00 rent for April when rent was due.

With respect to the landlord's claim for damages, including loss of rent based on the fixed term and cleaning costs, section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

It is important to note that in a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage.
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage

In this instance, the burden of proof is on the claimant, that being the landlord.

With respect to the loss of rent stemming from the tenant's failure to complete the fixed term, I find that the landlord is required to prove that the tenant had violated this specific term contained within the contract, that a genuine loss was incurred by the landlord due to a four-month vacancy of the room and that ongoing efforts were made to minimize or mitigate the damages by advertising the room.

In this instance, I find that the landlord has offered verbal testimony that each criteria of the test for damages had been met. However, this testimony was not sufficiently supported by any documentary evidence that had been properly served on the other party. Therefore I find that the landlord has not successfully proven that all elements of the test for damages were met.

With respect to the cost of cleaning, the landlord has testified that the rooms were not left in a clean condition. I find that section 37(2) of the Act states that, when a tenant vacates a rental unit, the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear.

In proving whether or not the tenant had complied with this requirement, I find that this can best be established with a comparison of the unit's condition when the tenancy began with the final condition of the unit after the tenancy ended. In other words, through the submission of move-in and move-out condition inspection reports containing both party's signatures. Section 23(3) of the Act covering move-in inspections and section 35 of the Act for the move-out inspections places the obligation on the landlord to complete the condition inspection report in accordance with the regulations and both

the landlord and tenant must sign the condition inspection report after which the landlord must give the tenant a copy of that report in accordance with the regulations.

In this instance, neither a signed move-in condition inspection report nor a signed move-out condition inspection report was completed. I find the failure to comply with sections 23 and 35 of the Act has hindered the landlord's ability to establish the end-of-tenancy condition. I find that the cleaning claim was not sufficiently proven and therefore must be dismissed.

Based on the evidence and testimony, I find that the landlord is entitled to total monetary compensation of \$700.00 comprised of \$650.00 for rent owed for April 2011 and a portion of the cost of the application in the amount of \$50.00.

I order that the landlord retain the \$325.00 security deposit being held in trust for the tenant, leaving a balance of \$375.00 owed to the landlord.

Conclusion

I hereby grant the landlord a monetary order for \$375.00. This decision is final and binding. The order must be served on the Respondent and, if necessary, may be enforced by Provincial Court (Small Claims) as an order of that Court.

The remainder of the landlord's application is dismissed without leave.

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: July 12, 2011.

Residential Tenancy Branch