



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the landlord and the tenants.

The landlord's application is seeking orders as follows:

1. For a monetary order for unpaid rent;
2. To keep all or part of the security deposit; and
3. To recover the cost of filing the application.

The tenants' application is seeking orders as follows:

1. Return all or part of the security deposit; and
2. To recover the cost of filing the application.

Both parties appeared, 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.

Issues to be Decided

Is the landlord entitled to a monetary order for unpaid rent?

Are either party entitled to security deposit?

Are either party entitled to recover the cost of filing their application from the other party?

Background and Evidence

The tenancy began on May 12, 2012. Rent in the amount of \$1,200.00 was payable on the first of each month. A security deposit of \$600.00 and a pet damage deposit were paid by the tenants. The tenancy ended on March 31, 2013.

Landlord's application

The landlord testified that the tenants provided less than 30 days notice to end the tenancy as required by the Act. The landlord stated that they were unable to rent the unit for the month of April 2013 and seek to recover the cost the loss of rent.

The tenants acknowledge they provided less than 30 days notice. The tenants stated that the landlord failed to mitigate the loss as the landlord did not advertise the unit within a reasonable amount of time and lost potential renters. The tenants stated the landlord did not advertise the rental unit until March 18 and 19 as they were watching for the advertisement to be posted on the local popular websites. The tenants stated they believe the landlord was also on holidays during this time period.

The landlord argued that they placed advertisement on the local popular websites prior to the 18th of March. The landlord stated they created a new advertisement on March 18, 2013, with updated pictures of the units. The landlord denies being on holidays.

Tenant's application

The tenant's testified that the landlord did not do a move-in condition inspection when moving in or out of the rental unit. The tenants stated the rental unit was clean when they vacated the unit.

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.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;

- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. 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 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

Landlord's application

45 (1) A tenant may end a periodic 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, and

(b) 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

In this case, the evidence of the both parties was that the notice to end the tenancy was given on March 7, 2013, with an effective date of March 31, 2013. Under section 45(1) of the Act the tenants were required to provide the landlord with at least one month notice to end the tenancy. I find that the tenants have breached the Act as the earliest date they could have legally ended the tenancy was April 30, 2013.

As a result of the tenants not complying with the terms of the tenancy agreement or the Act the landlords suffered a loss of rent for April 2013. The landlord is entitled to an amount sufficient to put the landlord in the same position as if the tenants had not breached the tenancy agreement or Act. This includes compensating the landlord for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

However, under section 7 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.

The evidence of the tenants was that the landlord failed to mitigate as the landlord did not advertise the rental unit on or shortly after the notice to end tenancy was provided and this delay lost potential tenants. The evidence of the tenants was that they were watching the local popular website and on March 18 and 19, 2013, the unit was finally advertised for rent. The evidence of the landlord was that the rental unit was advertised earlier in the month and that on these dates the unit was re-advertised with current pictures.

In this case, the parties have provided a different version of when the unit was advertised. I find without further evidence, the landlord has failed to prove when the unit was first advertise, as they did not file any documentary evidence, such as copies of those advertisement in support of their position. The evidence of both parties was that the rental unit was advertised on March 18, 2013.

While, I have found the tenants have breached the Act, I find the landlord failed to prove that they fully mitigate their loss. Therefore, I find the landlord is only entitled recover a portion of loss of rent, in the amount of the \$800.00.

I find that the landlord has established a total monetary claim of **\$850.00** comprised of the above described amounts and the \$50.00 fee paid for this application.

I order that the landlord to retain from the security deposit and pet damage deposit the above amount. The tenants are entitled to the balance due of **\$350.00**

Tenant's application

The tenants seek the return of the security deposit and pet damage deposit.

In this case, the landlord's application had merit and the landlord had the right to retain the security deposit and pet damage deposit to off-set any monetary award for unpaid rent, which has been granted as stated above and the tenant were granted a monetary order for the balance due.

As the tenants' application was filed after the landlord's application and the issues of the deposits were concluded by the landlord's application. I find the tenants are not entitled to recover the cost of filing their application from the landlord.

Conclusion

The landlord is granted a monetary and may keep a portion of the security deposit and pet damage deposit in full satisfaction of the claim.

The tenants are entitled to the balance due. The tenants are granted a formal order for the balance due should the landlord fail to comply with the decision

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 15, 2013

Residential Tenancy Branch

