



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MND, MNR, MNSD, FF

Introduction

This Dispute Resolution hearing was set to deal with an Application by the landlord for a monetary order for rent owed, loss of revenue, compensation for a returned cheque, liquidated damages and an order to keep the security deposit.

Both parties were present at the hearing. The tenant arrived late for the hearing and I then introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the affirmed testimony and relevant evidence that was properly served.

Issue(s) to be Decided

Is the landlord entitled to compensation under section 67 of the *Act* for rent, loss of rent and damages?

Background and Evidence

The landlord testified that the fixed term tenancy began in on September 1, 2012 but they allowed the tenant to move in early and the tenant took possession on August 24, 2012. Rent was set at \$2,200.00 per month and a security deposit of \$1,100.00 was paid. The fixed term tenancy was to expire on August 31, 2013. However, the tenant moved out at the end of May 2013.

The landlord testified that the tenant failed to pay \$1,100.00 of the \$2,200.00 rent due for the month of May 2013. The landlord is claiming compensation of \$1,100.00 remaining rent owed for May 2013.

The landlord testified that they immediately commenced advertising that the suite was available and showed it to several potential renters. The landlord stated that they finally managed to find a replacement tenant to rent the suite starting June 15, 2013. The

landlord testified that a loss of one-half a month rent was incurred as a result, and the landlord is claiming compensation of \$1,100.00.

In addition to the above, the landlord is claiming \$50.00 cost for a returned cheque and liquidated damages of \$600.00 for the tenant's action in terminating the agreement prior to the expiry of the fixed term agreed-upon in the contract.

The tenant acknowledged that they did end the tenancy prior to the expiry of the fixed term agreed upon in the contract.

In regard to the rental arrears being claimed by the landlord for the second half of the month of May, 2013, the tenant pointed out that they paid rent for half the month and had given verbal permission for the landlord to retain their \$1,100.00 security deposit in lieu of rent for the remaining half of May 2013.

In regard to the landlord's claim for compensation for loss of revenue for the first half of June 2013, the tenant argued that, by accepting a tenancy with a move-in date on June 15, 2013, instead of continuing to search for a new tenant willing to rent the unit earlier, the landlord did not properly mitigate the losses and therefore should not be entitled to any compensation for lost revenue. The tenant testified that they had been willing to find a replacement renter to sublet the unit and take over their lease.

The tenant also did not agree with the landlord's claims for the \$50.00 cost of the returned cheque, nor the \$600.00 claimed in liquidated damages

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 find that the tenant failed to pay all of the rent for May 2013 and the landlord is entitled to be compensated in the amount of \$1,100.00.

In regard to the landlord's claim for loss of \$1,100.00 revenue for the month of June 2013, I find that section 7(a) of the Act permits one party to claim compensation from the other for costs that result from a failure to comply with this Act, the regulations or their tenancy agreement. Section 67 of the Act grants a Dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

I find that in order to justify payment of damages under section 67, the Applicant would be required to 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 Respondent's violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage, and
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 landlord, to prove the existence of the damage/loss and that it stemmed directly from a violation of the agreement or a contravention of the Act on the part of the respondent.

In the case before me, I find that the tenant did violate the agreement by ending the tenancy before the expiry date and that the landlord did incur a loss of \$1,100.00 for the month of June 2013, as a result. I further find that the landlord made a reasonable effort to find a replacement tenant by advertising and did succeed in mitigating further losses by finding a replacement tenant to take possession of the unit as of June 15, 2013. I find that the landlord's claim for loss of revenue has met the test for damages and the landlord is entitled to be compensated the \$1,100.00 being claimed.

With respect to the claim of \$50.00 for the returned cheque and \$600.00 for liquidated damages for terminating the fixed term agreement prematurely, I find that these claims are made pursuant to terms that would need to be contained in a tenancy agreement.

Section 58 of the Act provides that, except as restricted under this Act, a person may make an application for dispute resolution in relation to a dispute with the person's landlord or tenant in respect of any of the following:

- (a) rights, obligations and prohibitions under this Act;
- (b) rights and obligations under the terms of a tenancy agreement that
 - (i) are required or prohibited under this Act, or
 - (ii) relate to the tenant's use, occupation or maintenance of the rental unit, or the use of common areas or services or facilities.

Section 6 of the Act also states that the rights, obligations and prohibitions are enforceable between a landlord and tenant under a tenancy agreement and either party has the right to make an application for dispute resolution if they cannot resolve a dispute over the terms of their tenancy agreement. (My emphasis)

I find that, an arbitrator is authorized to make determinations and orders to enforce both the Act and terms in a tenancy agreement.

However, I find that the tenancy agreement signed by this landlord and tenant does not contain a term which permits the landlord to charge an NSF cheque fee. I also find that the agreement between these individuals does not include a liquidated damages term. I find that the Act will only permit these charges to be imposed on a tenant if the tenancy agreement contains specific terms allowing this.

Based on the testimony and evidence presented during these proceedings, I find that the landlord is entitled to total compensation of \$2,250.00, comprised of \$1,100.00 for unpaid rent owed for May 2013, \$1,100.00 for loss of revenue for the month of June 2013 and the \$50.00 cost of the application.

I order that the landlord retain the tenant's \$1,100.00 security deposit in partial satisfaction of the claim leaving a remainder of \$1,150.00 still outstanding in favour of the landlord.

I hereby grant the landlord a monetary order under section 67 of the Act for \$1,150.00. This order must be served on the Respondent and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The remaining claims for damages are dismissed without leave.

Conclusion

The landlord was partially successful in the application and was granted a monetary order for rental arrears and loss of rent, but the claims for other damages were 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: August 27, 2013

Residential Tenancy Branch