



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding CREIGHTON AND ASSOCIATES REALTY
and [tenant name suppressed to protect privacy]

Decision

Dispute Codes: MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for loss of rent as well as an order to retain the security deposit in satisfaction of the claim.

The hearing was also to hear a cross application by the tenant seeking the return of the security deposit.

Both parties were present at the hearing. At the start of the hearing I 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 monetary compensation for loss of rent?

Background and Evidence

The landlord testified that the tenancy began on January 1, 2013 as a fixed term tenancy to expire on June 31, 2014. The rent was \$1,500.00 per month and a security deposit of \$750.00 was paid.

The landlord testified that the tenant gave notice and vacated the rental unit on July 31, 2013. A copy of the tenant's notice was in evidence.

The landlord testified that they immediately attempted to find a replacement renter to take over the rental unit and succeeded in finding a new tenant for the month of September 2013. The landlord is claiming a loss of \$1,500.00 revenue for the month of August 2013, during which the rental unit was left vacant.

The tenant testified that, from the start of the tenancy, the landlord was aware that they did not want to remain for the long-term, as evidenced in the copies of the written communications between them.

The tenant testified that, when their notice to vacate was sent to the landlord, they had been given the understanding that the landlord was agreeable to their plan to leave before the end of the fixed term. The tenant pointed out that, in their communications with the landlord about ending their tenancy, they were never warned that they would be held responsible for rent beyond the move-out date.

The tenant acknowledged that they did sign a fixed term tenancy agreement, but believed that they had successfully negotiated a mutual agreement to end the tenancy. Submitted into evidence was a copy of the tenancy agreement confirming that the contract would expire on June 31, 2014. Both parties had signed the agreement.

Analysis:

An applicant's right to claim damages from another party is dealt with under section 7 of the Act which states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying party 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.

I find it important to note that in a claim for damage or loss under the Act, the party making the claim 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, 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 and value of the damage/loss stemming directly from a violation of the agreement or a contravention of the Act by the respondent, and to verify that a reasonable attempt was made to mitigate the damage or losses incurred.

I find that these two parties entered into a fixed term tenancy agreement that was to expire on June 31, 2014. I find that the tenant terminated the agreement prior to the expiry of the fixed term.

I accept that the landlord made a reasonable attempt to mitigate their losses by trying to re-rent the unit. I find that the landlord was unable to find a renter until September 2013 and that a loss of \$1,500.00 was incurred for the month of August 2013.

Accordingly, I find that the landlord's monetary claim for \$1,500.00 loss of rent satisfied all elements of the test for damages and compensation is therefore warranted.

Based on the above facts I find that the landlord has established a total monetary claim of \$1,550.00 comprised of \$1,500.00 for the loss of rent for August 2013 and the \$50.00 fee for this application.

I order that the landlord retain the tenant's \$750.00 security deposit in partial satisfaction of the claim, leaving \$800.00 still outstanding. I hereby grant the Landlord a monetary order for \$800.00. This order must be served on the tenant and may be enforced through Small Claims Court if not paid.

The tenant's application is dismissed without leave.

Conclusion

The landlord is successful in the application and is granted a Monetary Order for loss of revenue and an order permitting the landlord to retain the tenant's security deposit in partial satisfaction of the claim.

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 21, 2013

Residential Tenancy Branch

