



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. No issues were raised with respect to service of the application and respective evidence submissions.

Preliminary Issue: Landlord request for amendment

At the outset of the hearing, the landlord attempted to increase the monetary claim to include loss of rent for February 2020. The landlord did not file an amendment even though the initial application was filed January 14, 2020 and the hearing was not until June 8, 2020. I find the landlord had plenty opportunity to file an amended application and it would be prejudicial to the tenants to allow this amendment in the hearing. The landlord's amendment request was denied.

Issues

Is the landlord entitled to monetary compensation for unpaid rent and the filing fee for this application?

Is the landlord entitled to retain the security deposit?

Background & Evidence

The tenancy began on February 15, 2019. The lease was for a fixed term of just over one year expiring on February 27, 2020. The monthly rent was \$3280.00. The tenants paid a security deposit of \$1640.00 at the start of the tenancy which the landlord continues to retain.

By way of a letter dated November 29, 2019, the tenants advised the landlord they would be ending the tenancy early with an effective January 1, 2020. The tenants alleged various complaints they had in respect to the landlord's compliance with the Act and the tenancy agreement. The tenants vacated the rental unit on December 31, 2019.

The landlord is claiming \$1640.00. in agents commission to re-advertise the unit. The landlord submits that clause #15 of the tenancy agreement addendum provides the tenants would be liable for agents commissions in the event the lease was terminated early.

The landlord is also claiming loss of rent in the amount of \$3280.00 for the month of January 2020. The landlord testified that even though he did not agree with or accept the tenant's notice, the suite was advertised for rent immediately upon receipt of the notice. The landlord testified he was not able to secure new tenants for January 2020.

The tenants acknowledged breaking the lease before the fixed term but argue that the landlord himself breached the lease several times during the lease. The tenants point to a plumbing incident that occurred in June 2019 as well as numerous allegations of the landlord entering the rental unit unauthorized.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8, Unconscionable and Material Terms, provides the following guidance:

In order to end a tenancy for a breach of a material term, the party alleging the breach must inform the other party in writing of the following:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find the tenant has failed to establish that the tenancy was ended due to a material breach of the tenancy agreement and even if it were, the tenants failed to provide the landlord with a reasonable opportunity to correct the alleged breach; and failed to notify the landlord that they would end the tenancy if the problem was not fixed by the stated deadline.

I accept the landlord's testimony and evidence that he advertised the rental unit as soon as possible and failed to secure tenants for January 2020. I find the tenants are responsible for the landlord's claim of loss of rent in the amount of \$3280.00.

The tenancy agreement or addendum signed by the parties does not stipulate an amount for liquidated damages in the event the tenants terminate the tenancy before the end of the fixed term. Rather clause #15 states the tenants would be liable for agents' commissions. The landlord failed to submit any evidence in support of the actual amount agents' commissions charged. This part of the landlord's claim is dismissed without leave to reapply.

As the landlord was for the most part successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for this application for a total monetary award of \$3380.00.

The landlord continues to hold a security deposit in the amount of \$1640.00. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, the landlord is entitled to a monetary order in the amount of \$1,740.00 (\$3280.00 +100.00 – 1640.00).

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$1,740.00**. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: June 08, 2020

Residential Tenancy Branch