

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's amended application for a Monetary Order for damage to the rental unit; unpaid rent; damage or loss under the Act, regulation or tenancy agreement; and, recovery of the filing fee paid for this application. Both parties appeared at the hearing and were provided the opportunity to be heard.

The tenant stated that she had not been served with the landlord's amended application. The landlord provided evidence that the amended application was sent to the tenant by registered mail on April 8, 2010 and that it was not claimed by the tenant. I accepted that the landlord sufficiently served the tenant with the amended application and I proceeded to consider the landlord's amended claims. The amendment included loss of rent for the months of January through March 2010 and cleaning of \$200.00 to which the tenant was provided the opportunity to respond.

Issues(s) to be Decided

1. Is the landlord entitled to a Monetary Order for damages to the rental unit?
2. Is the landlord entitled to unpaid rent or loss of rent, and if so, the amount?

Background and Evidence

The parties provided the following undisputed testimony. The one year fixed term tenancy commenced June 1, 2009. The tenant was required to pay rent of \$1,250.00 on the 1st day of the month. The tenant had failed to pay rent for November 2009 when due and on December 4, 2009 the landlord was provided an Order of Possession and a Monetary Order for unpaid rent for November 2009 under file number 242412. The landlord has already been authorized to retain the tenant's security deposit by way of

the decision issued under file number 242412. The tenant vacated the rental unit December 21, 2009.

With the amended application the landlord was seeking to recover loss of rent from December 2009 through March 2010 at the monthly rate of \$1,250.00 plus \$200.00 for cleaning the rental unit after the tenant vacated.

The landlord was asked to describe his advertising efforts during the hearing. The landlord initially stated that he started advertising the rental unit at the beginning of January 2010 for \$1,250.00 per month. Near the end of January 2010 the landlord reduced the rental rate to \$1,150.00 per month. A replacement tenancy commenced April 1, 2010 at the reduced rate of \$1,150.00. The landlord attributed the length of time required to re-rent the unit to a softening of the rental market. The landlord stated that he initially advertised in the newspaper but it was expensive so the landlord advertised on two websites.

The tenant stated that she saw an advertisement in the newspaper at the end of December 2009 or early January 2010 for the rental unit and the landlord was asking \$1,300.00 – 1,350.00 per month. The tenant was of the position that the rental unit was very nice and should have rented quite easily. The tenant also noted that the landlord did not provide documentary evidence of the new tenancy agreement. The tenant acknowledged not cleaning the floors and bathroom before vacating but claims she had removed all of her possessions and left the unit undamaged. The tenant acknowledged that she owed for loss of rent for December 2009 and the landlord's claim for cleaning of \$200.00 was reasonable. However, the tenant claimed that she tried to pay the landlord for December 2009 in an effort to stay until the end of December 2009 but he refused to accept payment.

After hearing the tenant's testimony concerning the advertisement for \$1,300.00 – \$1,350.00 per month, the landlord acknowledged that he may have initially advertised for \$1,300.00 per month.

The landlord did not provide copies of the tenancy agreement, the new tenancy agreement, the condition inspection reports (if any) or advertisements in support of this claim.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

Based upon the undisputed testimony, I accept that there was fixed term tenancy in place and I find that the tenancy ended earlier than the expiration date due to the tenant's failure to pay rent. Where a fixed term tenancy ends earlier than the expiration date, the tenant may be held liable for the loss of rent up to the expiration date. However, the landlord must show that he did whatever was reasonable step to minimize the loss of rent.

I also find the landlord's failure to provide documentary evidence of the advertising efforts and a copy of the new tenancy agreement to be insufficient to meet his burden to prove his claim of loss of rent. Even if I accept that the rental unit did not re-rent until April 1, 2010 for the reduced rate of \$1,150.00 I find the landlord did not make reasonable efforts to minimize the loss. I find it reasonable to expect the landlord would have commencing advertising efforts earlier in December 2009 and to expect a landlord

to have knowledge of the market value for their rental unit and advertise the rental unit at market rent.

Further, I accept that the landlord tried to advertise the rental unit after the tenant vacated at a rental rate greater than what the tenant was paying and that this contributed to the delay in finding a replacement tenant.

In light of the above factors, I find the landlord failed to show that he did whatever was reasonable to minimize his loss of rent for January 2010 through March 2010 and I do not award the landlord for loss of rent for that period.

Since the tenant occupied the rental unit in December 2009 I award the landlord \$1,250.00 for loss of rent for December 2009. I also award the landlord \$200.00 for cleaning based upon the undisputed need for additional cleaning.

I do not award the filing fee to the landlord as I accept that the tenant had made an attempt to pay the landlord for use and occupancy for December 2009 and he did not accept it.

In light of the above findings, the landlord is provided a Monetary Order in the total amount of \$1,450.00 to serve upon the tenant.

Conclusion

The landlord was partially successful in this application and has been provided a Monetary Order in the total amount of \$1,450.00 to serve upon the tenant.

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: May 26, 2010.

Dispute Resolution Officer