



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNDC, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application for a monetary Order for loss or damage, to retain the deposit paid in partial satisfaction of the claim and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself, the Application for Dispute Resolution was reviewed, the hearing process was explained to the parties and the parties were provided an opportunity to ask questions in relation to the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral evidence and to make submissions during the hearing.

Preliminary Matters (s)

On September 3, 2009 the landlord submitted late evidence and an amended application for dispute resolution which reduced the monetary claim for compensation. The tenant testified that this late evidence was delivered to his service address on August 27, 2009 and that he has had an opportunity to review the package.

During the hearing several attempts were made to contact a tenant witness, however, one telephone number resulted in voice mail and the second number was not available.

Issues to be Decided

Is the landlord entitled to compensation for the loss of rent revenue in the sum of \$2,000.00 for the month of June, 2009?

Is the landlord entitled to compensation for yard and carpet cleaning in the sum of \$206.45?

Is the landlord entitled to filing fee costs?

Background and Evidence

This one year fixed-term tenancy commenced January 1, 2009; the tenants moved in 10 days prior to this date. Rent was \$2,000.00 per month, due by the first of each month. A deposit in the sum of \$1,000.00 was paid on December 22, 2008.

During the hearing the parties agreed to the following facts:

- on April 21, 2009 the tenants informed the landlord they would be moving;
- on May 20, 2009 the tenants provided written notice that they would move out of the rental unit effective July 1 or June 15, 2009;
- that on May 22, 2009 the tenants altered the move-out date to May 31, 2009;
- that the tenants made efforts to identify alternate tenants in order to mitigate the loss of June 2009 rent owed;
- that the two families identified as possible renters by the tenants did not move into the rental unit;
- that the landlord agreed to allow the tenants to move at the end of May, and that he expected to be paid June rent.

The tenant supplied email evidence, some of which included:

- April 21, 2009 email to the landlord requesting the tenancy term be shortened in anticipation of a move by the tenant;
- May 6, 2009 email from the landlord requesting the tenants telephone him;
- May 20, 2009 email from the landlord to the tenants approving of the web site advertisement seeking replacement tenants;
- May 21, 2009 email to the tenants from a potential renter indicating the need to give their current landlord two month's notice but if they can rent their unit for July 1, 2009 they would be ready to move into the home on June 15;

The parties each had contact with two families who were potential tenants. Neither of those parties moved into the unit but the landlord was able to mitigate by finding new tenants for July 1, 2009.

The parties dispute the events that followed the initial email sent to the landlord on April 21, 2009. The tenants stated that the landlord had indicated that an arrangement could be made that satisfied both parties and that the failure of the landlord to come to an agreement in relation to the new tenants broke what they considered to have been a gratuitous promise, resulting in a loss of tenants for a June move-in date.

The tenants testified that they made a concerted effort to locate new tenants and that the one family who indicated they could take possession in mid-June failed to do so as the landlord was inconsistent with them in relation to the terms of a new tenancy.

The landlord testified that by May 25, 2009 one of the potential tenants had confirmed with him that they could not move in until July 1, 2009 and that on either May 27 or 28th the landlord approached the same family asking if they could pay an additional \$225.00 per month rent. The landlord stated that this enquiry did not impact the potential move-

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in date that had been offered by these individuals. The tenants testified that a possible rent increase resulted in the potential tenants altering a potential June 15 move-in date and the landlord countered that those tenants had already told him that they would not move in until July 1, 2009.

The second family identified by the tenants as possible renters indicated that they would be interested in a July 1, 2009 possession date.

The landlord claimed compensation for yard work totalling \$150.00. The landlord provided photographs indicating the need for some weeding in a flower bed and around patio stones. The tenant stated that the landlord did provide a lawn mower but no other equipment that would assist with weeding. The tenant stated he cut the grass in all areas where the lawn mower could reach.

The landlord claimed compensation for carpet cleaning in the sum of \$156.45. During the hearing the tenant offered to pay for one half of this cost.

Analysis

Section 45 of the Act provides the following:

- (2) A tenant may end a fixed term 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,
 - (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
 - (c) 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.

The tenants sent the landlord an email on April 21, 2009 indicating they would be moving; no date was provided. In May, 2009 the tenants did provide the landlord with written notice which included a vacancy date, however, several move-out dates were provided. The final move-out date of May 31 given by the tenants failed to provide the landlord with a full month's notice. Further, the tenants gave notice to end a fixed-term tenancy that was to terminate on December 31, 2009. Notice given prior to the end of the fixed-term constitutes a breach of the tenancy agreement, as determined by section 45(b) of the Act.

The tenants did make efforts to locate new tenants, however; I do not find that the landlord entered into any agreement that would minimize the level of responsibility owed by the tenants to the landlord. The landlord did attempt to negotiate agreements with the two families identified by the tenants and, despite the details of those negotiations, I

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have no evidence before me that either of these potential renters committed to moving in earlier than July 1, 2009.

I find that the tenants gave the landlord inadequate notice to end a tenancy which was not to terminate until December 2009. I also find the tenant's claim that a failure by the landlord to cooperate resulted in the loss of renters for June rent is without merit. If the tenants had chosen to remain in the rental unit until the end of June the landlord would have been satisfied, new tenants could have taken possession July 1 and neither party would have experienced a loss. While the tenants did make efforts to mitigate a loss, the burden to find suitable tenants fell to them. I have determined that the efforts made by the tenants did not result in any prospects for a move-in prior to the end of June and that on May 22, when the tenants provided the landlord with a final move-out date of May 31, there was too little time left to locate a tenant for June 1, 2009. There is no evidence before me that the tenants ever had a possible renter identified for June 1, 2009. Therefore, I find that the landlord is entitled to loss of June 2009 rent revenue in the sum of \$2,000.00.

In relation to the yard work compensation sought by the landlord, I find that, on the balance of probabilities, that tenants did complete yard work but that the work completed did not meet the standard desired by the landlord. Residential Tenancy Branch policy suggests tenants are responsible for lawn maintenance and a reasonable amount of weeding in flower beds. In the absence of any evidence that the tenants were informed by the landlord that the weeding was inadequate, I dismiss without leave to reapply the claim for yard work compensation.

The landlord has claimed compensation in the sum of \$156.45 for carpet cleaning costs. During the hearing the tenant offered to pay one half of this bill. The landlord has not completed move-in or move-out condition inspections as required by sections 23 and 35 of the Act, but, given the tenant's acknowledgement that the carpets required cleaning, I find that the landlord is entitled to compensation in the sum of \$78.22.

The landlord is holding in trust a deposit, plus interest, in the sum of \$1,000.41.

As the landlord's application has merit I find that the landlord is entitled to filing fee costs.

Conclusion

I find that the Landlord has established a total monetary claim of \$2,128.22 comprised of loss of June rent revenue, carpet cleaning costs of \$78.22 and the \$50.00 fee paid for this application. I order that the Landlord retain the deposit and interest of \$1,000.41 in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,127.81**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The landlord's claim for yard work compensation is dismissed without leave to reapply.



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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: September 08, 2009.

Dispute Resolution Officer