



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issues(s) to be Decided

This is a request for a monetary order for \$6,262.66, and a request for the respondent bear the \$100.00 cost of the filing fee paid for this dispute resolution hearing

Background and Evidence

The applicant testified that:

- In February 2009, the tenants gave written notice that they would be breaking a fixed term lease and moving on May 31, 2009, two months before the end of the term of the lease.
- They attempted to re-rent the unit but were unable to do so until July 13, 2009 and therefore the landlords lost \$4430.71 in rent.
- They were unable to re-rent the unit at the same amount paid by the respondent's and therefore lost a further \$306.45 for the month of July 2009.

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- The landlords also had to pay a re-leasing fee to the property manager in the amount of \$1417.50.
- The landlords also had to pay a \$100.00 move out fee charged by the Strata Corp..

The applicants are therefore requesting an order as follows:

Lost rental revenue	\$4745.16
Re-leasing fee	\$1417.50
Filing fee	\$100.00
Total	\$6362.66

The applicants are requesting that they be allowed to keep the full security/pet deposit of \$3900.00 towards this claim and that a monetary order be issued for the difference.

The respondent testified that:

- At the time that they signed the lease they informed the landlords that they were looking for a place to buy and therefore did not want to sign a one year lease.
- The landlord wanted the one year lease but agreed to allow them to vacate if they gave two months notice to end the tenancy.
- They did give a full two months notice to end the tenancy and therefore they believe that they complied with the terms of the agreement.
- The landlord had previously sent a letter stating that the unit was re-rented and requesting that the tenants pay a shortfall of \$611.19 to close the matter, however they did not agree to this amount and requested the return of their full security/pet deposit plus interest.
- They fail to see how the claim could have gone from \$611.19 to \$6,262.66.

The respondents therefore believe that they have met the terms of the tenancy agreement, that they should not have to pay anything further to the landlords, and that their full security/pet deposits should be returned.

In response to the tenant's testimony the landlord stated:

- Originally the landlords had been willing to bear the loss as long as the tenants would pay \$611.19, however since the tenants would not agree to this they have decided to claim the full amount of the loss that they have suffered.

Analysis

When parties sign a fixed term tenancy agreement is for the protection of both the landlord and the tenant. The tenant has the security of knowing that they will not be required to vacate for the term of the tenancy and the landlord has the security of knowing the tenant will not vacate prior to the end of the term of the tenancy. Therefore if one or the other party breaches the terms of a tenancy agreement they are liable for any loss suffered by the other.

In this case the landlord has shown that they suffered a loss of rental revenue and that there was a fee paid to the rental agent to re-rent the unit. It is my decision that the tenants are liable for the lost rental revenue and the re-renting fee.

I will not however allow the \$100.00 claim for the move out fee charged by the Strata Corp. as there is nothing in the tenancy agreement relating to this charge.

The tenant claims that there was an agreement allowing them to give two months notice and vacate prior to the end of the term of the tenancy however I have read the tenancy agreement and there is no such term. The only term in the tenancy agreement of any relevance, is term number 13 which limits the tenant's liability to a maximum of \$7,800.00, which is equal to two months' rent. In this case the landlords claim is less than \$7,800.00.



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Conclusion

I allow \$6,162.66 of the landlords claim. The landlord may therefore retain the full security deposit plus interest totalling \$3927.65, and I have issued an order for the tenants to pay \$2235.01 to the landlords

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: December 17, 2009.

Dispute Resolution Officer