

Decision

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the landlord a monetary order as compensation for damage or loss under the Act, regulation or tenancy agreement, in addition to recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to either or both of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of tenancy was from May 29, 2009 to May 29, 2010. Rent in the amount of \$1,525.00 was payable in advance on the second day of each month, and did not include utilities. No security deposit was collected.

By letter dated September 30, 2009, the tenant(s) gave notice to end the tenancy effective October 30, 2009. Subsequently, the tenant(s) made the unit available to the landlord on October 9, 2009. Rent was paid to the end of October 2009.

A new renter was found for the unit effective December 1, 2009. Pursuant to a written residential tenancy agreement, the 4 month fixed term of this tenancy expires on March 31, 2010. Monthly rent is \$1,575.00 and includes utilities. A security deposit of \$787.50 was collected on November 18, 2009.

The landlord seeks compensation for loss of rental income for the month of November 2009 in the amount of \$1,525.00.

Further, the landlord claims that as rent of \$1,575.00 pursuant to the new tenancy agreement includes utilities, and that as utilities will cost the landlord \$125.00 per month, the landlord seeks compensation for the rent differential of \$75.00 per month. This amount is calculated as follows:

$$\$1,575.00 \text{ (original rent)} - \$125.00 \text{ (landlord's cost of utilities)} = \$1,450.00 \text{ (net rent to the landlord)}$$

$$\$1,450.00 \text{ is } \$75.00 \text{ less than the original rent } (\$1,525.00 - \$1,450.00)$$

The differential compensation sought by the landlord concerns December 2009, and each of the 5 months from January to May 2010, in the total amount of \$450.00 (6 x \$75.00).

The landlord's agent testified that advertising for new renters was undertaken by the landlord on kijiji on October 24, 2009, and subsequently on craigslist on October 31, November 7 and November 13, 2009. Two separate advertisements were also placed in the newspaper, advertising the unit for sale ($\$91.19 + \$57.05 = \$148.24$). One further advertisement was placed in the newspaper, advertising the unit for rent (\$99.89).

The landlord also seeks compensation for postage of \$10.76 arising from service of the documents, in addition to recovery of the \$100.00 filing fee.

Analysis

Residential Tenancy Policy Guideline # 3 addresses "Claims for Rent and Damages for Loss of Rent," and provides in part as follows:

Where a tenant has fundamentally breached the tenancy agreement or abandoned the premises, the landlord has two options. These are:

1. Accept the end of the tenancy with the right to sue for unpaid rent to the date of abandonment
2. Accept the abandonment or end the tenancy, with notice to the tenant of an intention to claim damages for loss of rent for the remainder of the term of the tenancy.

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Based on the documentary evidence and testimony of the parties, I find there was a two week delay between the date when the tenant(s) made the unit available to the landlord on October 9, 2009, and October 24, 2009 when the landlord first advertised the unit for rent on kijiji. Accordingly, arising from this delay and in consideration of the fact that no cleaning or repairs were identified as being required in the unit after October 9, 2009, I find that the landlord has established entitlement to compensation for loss of rental income limited to one half month's rent of \$762.50 ($\$1,525.00 \div 2$).

As for the landlord's claim for differential compensation, calculated on the basis of utilities being included in the rent versus not being included in the rent, as above, I find there is insufficient evidence to support a cost for monthly utilities in the amount of \$125.00 or any other amount. I therefore dismiss this aspect of the landlord's claim.

Where it concerns advertising, I note from the classified advertising receipts submitted in evidence, that two separate advertisements in the newspaper at a combined cost of \$148.24 (\$91.19 + \$57.05) fell into the classification of “APT CONDOS FOR SALE.”

Pursuant to Guideline # 3 above, as these advertisements concerned undertakings by the landlord to sell the unit, as opposed to efforts to mitigate loss of rental income by attempting to find another renter, I dismiss this aspect of the landlord’s claim.

However, I find that the landlord has established entitlement to advertising costs in the amount of \$99.89 which reflects the cost of an advertisement under the newspaper’s classification “APT. FURNISHED.”

As to recovery of postage, section 72 of the Act addresses **Director’s orders: fees and monetary orders**. With the exception of the filing fee for an application for dispute resolution, the Act does not provide for the award of costs associated with litigation to either party to a dispute. In the result, I dismiss this aspect of the landlord’s claim.

As the landlord has succeeded in this application, I find the landlord is entitled to recover the \$100.00 filing fee.

In summary, I find that the landlord has established a claim of \$962.39. This is comprised of \$762.50 in loss of rental income for November 2009, \$99.89 for advertising, and the \$100.00 filing fee.

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$962.39**. This order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: February 16, 2010

Dispute Resolution Officer