

DECISION

Dispute Codes: *MNDC, FF*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order to recover the loss of income he incurred when the tenant ended the fixed term lease prior to the end date. The landlord also applied for the recovery of the filing fee.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Has the landlord established a claim for the loss of income he suffered? Is the landlord entitled to the recovery of the filing fee?

Background and Evidence

The tenancy started on December 15, 2008 for a fixed term on one year ending on December 15, 2009. The monthly rent was \$1,400.00. The tenant moved out on April 30, 2009.

The landlord stated that a move out inspection was conducted and the landlord found damage to the carpets by the tenant's pets, holes in the garage walls, damage to the hardwood floors, pet odour and smoke smell through the house and cat urine that had soaked right through the carpets into the underlay.

The tenant denied having caused the above damage, but admitted that she smoked and that she had two cats and one dog. The landlord is not claiming the cost of repairs but stated that it took two and a half weeks to replace the carpets and clean the house after the tenant moved out.

The landlord stated that as soon as the tenant gave her notice to end tenancy, the landlord advertised the availability of the unit on the local on line site which is at no cost

to the users. He stated that he had about ten expressions of interest and after screening and showing the unit he found a renter for July 01, 2010.

The unit remained vacant for two months after the tenant moved out and the landlord is claiming a loss of income in the amount of \$2,800.00.

The tenant argued that she did not receive a copy of the tenancy agreement that was signed by her daughter and therefore did not know that smoking was not permitted in the unit. She also stated that the landlord breached the tenancy agreement by not conducting proper condition inspections and interfering with the mail lock box. For these reasons the tenant ended the tenancy earlier than the end date.

Analysis

Section 45(2) of the *Residential Tenancy Act* states that 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 on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, I find that the tenant ended the tenancy on a date that was earlier than the date specified in the tenancy agreement as the end of the tenancy thereby resulting in a loss of income to the landlord. 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.

Section 5 of the *Residential Tenancy Policy Guideline* states that where the tenant breaches a term of the tenancy agreement, the landlord has a legal obligation to do whatever is reasonable to minimize the loss. This duty is commonly known in the law as the duty to mitigate.

In this case, I find that the landlord suffered a loss of income and made reasonable efforts to find a new tenant. The unit was re-rented for July 01, 2009.

Based on the sworn testimony of both parties, I find that the landlord has established a claim for the loss of income he suffered and is entitled to rent for May and June 2009 in the amount of \$2,800.00. Since the landlord has proven his case he is entitled to the recovery of the filing fee. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$2,850.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$2,850.00**.

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: July 27, 2010.

Dispute Resolution Officer