



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNR, MNCD, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and the tenant.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid or lost rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted into evidence the following documents:

- A copy of a tenancy agreement signed by the parties on June 11, 2009 for a 1 year fixed term tenancy that began on June 15, 2009 and was set to end on June 14, 2010 for a monthly rent of \$1,250.00 due on the 1st of the month. A security deposit of \$625.00 and a pet damage deposit of \$312.50 paid on June 11, 2009;
- Copies of e-mail correspondence between the two parties between October 7, 2009 and December 26, 2010. The correspondence includes the tenant's identification of a problem with second-hand smoke entering the rental unit and the landlord's response and the tenant's initial email notice to the landlord dated December 14, 2009 that she will be moving out by January 15, 2009 because the smoke problem is worsening;
- A copy of a "note to file" indicating that when the landlord met with the tenant on January 18, 2010 he reminded the tenant that would be responsible for payment

of rent until June, he states in this note that the tenant looked at him and nodded;

- A copy of a letter dated May 26, 2010 from the landlord to the tenant stating that he had rented the rental unit out effective June 1, 2010;
- A copy of an advertisement from a local internet website showing the rental unit with a date of February 2, 2010 printed on the page. In the hearing the landlord confirmed this advertisement ran for 2 weeks or perhaps a month;
- A copy of a receipt from a local print media provider that has 4 local publications for an advertisement set to run from February 12, 2010 to February 25, 2010;
- A copy of a receipt from a local university housing registry dated February 3, 2010 for \$20.00. In the hearing the landlord clarified this receipt was to advertise the unit for a 2 week period; and
- A copy of returned cheques payable to the landlord from the tenant for rent due on the 15th of January, February, April, and May showing there were stop payments on all of these cheques and a copy of the landlord's bank records showing the March 15, 2010 cheque was returned as stop payment.

The landlord testified that he did not accept the email dated December 14, 2010 as the tenant's notice to end tenancy as it was not in writing. The landlord did not provide testimony as to when he was satisfied that he had received notice the tenant intended to vacate the rental unit.

In addition to the above noted advertising the landlord indicated that he had a posting in the lobby of the condominium complex and that it was ultimately this advertisement that was responsible for finding the new tenants.

The tenant asserts that it was the landlord's responsibility to ensure the rental unit was "habitable, with regard to substances that pose a threat to the tenant's health". She further asserts that because of her health issues she had no choice but to end the tenancy.

The tenant testified that despite the landlord's claim, he never contacted her to say he was having trouble renting the unit to provide her with an opportunity to assist in finding a new tenant. The landlord testified that he felt it was his responsibility to re-rent the rental unit.

The landlord confirmed that he did not start advertising until February 2010 and that he did not advertise using any other method or for any other time frames other than those noted above except he states that he may or may not have used Craigslist.

Analysis

Section 45 of the *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 is not earlier than the date specified in the tenancy agreement as the end of the tenancy.

This section goes on to say that if the landlord has fail to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

While I accept that the tenant identified a problem with the smell of second-hand smoke in the hallway I find it is not clear that there was an expectation on the part of the tenant that this was her notice to the landlord to fix the problem or that this was a material component of the tenancy agreement.

As a result, I find the tenant did not have reason to end the tenancy earlier than the end of the tenancy as stipulated in the tenancy agreement. Having said this it is clear that the tenant relinquished possession of the rental unit no later than January 15, 2010.

Section 7(1) of the *Act* states that if a tenant does not comply with the Act, regulation or tenancy agreement the non-complying tenant must compensate the landlord for damage or loss that results.

Section 7(2) states if a landlord claims compensation for damage or loss that results from the tenant's non-compliance, he must do whatever is reasonable to minimize the damage or loss.

Regardless of whether or not the landlord accepted the tenant's notice to end the tenancy in her email dated December 14, 2010, I find that he was aware the tenant was seeking to end the tenancy and that she had medical reasons for pursuing the end of the tenancy.

I also note that by his own testimony the landlord did not advertise in December 2009 or January 2010. I also note that other than the posting in the lobby of the building the landlord advertised only in the month of February and even then only advertised for two week periods in each of the medium chosen to advertise in. The landlord provided no explanation as to why he did not advertise beyond February 2010.

I find that the landlord has failed to do whatever is reasonable to minimize the loss. When trying to rent a rental unit it would be reasonable to advertise the unit as soon as possible and continuously until the unit was rented. If that did not work I would look at alternatives in addition to those methods.

I therefore find the landlord failed to meet his obligations under Section 7(2).

Conclusion

For the reasons noted above, I dismiss the landlord's application in its entirety.

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: November 26, 2010.

Dispute Resolution Officer