



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, 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.

Issue(s) to be Decided

This is a request for a monetary order for \$10,630.61, a request to retain the full security deposit of \$950.00 towards the claim, and request that the respondent bear the \$100.00 cost of the filing fee that was paid for the application for dispute resolution.

Background and Evidence

The applicant testified that:

- The tenants signed a tenancy agreement for a fixed term ending on March 31, 2011.
- The tenants broke that agreement and vacated the rental unit on October 2, 2010 without giving any written notice, leaving six months of the fixed term still outstanding.

- The tenants also failed to pay their water bills which were not included in the tenancy and were their responsibility to pay.
- He attempted to re-rent the unit right away placing ads on two local Internet advertising sites however he was unable to re-rent the unit until January 15, 2011, and then at a reduced rent.
- The respondent's rent was of \$1900.00 per month however he was only able to re-rent it for \$1700.00 per month.
- He has therefore lost three full month's rent, plus \$1050.00 rent for January 2011, and as rent has been reduced he will receive \$200.00 less per month for the months of February 2011 and March 2011.

The applicant is therefore requesting a reduced order as follows:

Lost rental revenue for October 2010	\$1900.00
Lost rental revenue for December 2010	\$1900.00
Lost rental revenue for January 2011	\$1050.00
Projected lost revenue for February 2011	\$200.00
Projected lost revenue for March 2011	\$200.00
Outstanding water utility bills	\$238.61
Filing fee	\$100.00
Subtotal	\$7488.61
Less a \$50 credit for the caps the tenants installed	- \$50.00
Total	\$7,430.61

The applicant further requests an order allowing him to keep the full security deposit of \$950.00 towards this claim and requested a monetary order he issued for the difference of \$6,488.61.

The respondent's testified that:

- They could no longer afford rent of \$1900.00 per month and therefore in August 2010 they informed the landlord they would be moving, although they did not give any written notice.
- They did not give the landlord an exact date however the landlord was aware that they had difficulty even paying the September 2010 rent, and he knew that they were packing in the month September 2010.
- They moved out on October 2, 2010, and the landlord told them he was very pleased with the condition in which they left the house, and nothing was said about having to pay any further rent.
- After they vacated the rental unit the landlord also did some work on the house and therefore they believe that it may not have been available for re-renting right away.
- They also question whether the landlord took reasonable steps to re-rent the unit.
- They were not aware that they could not leave a fixed term tenancy before the end of the term, and they were not aware that they had to give written notice to end the tenancy.
- They do not dispute the claim for utilities; however they do not believe that they should have to pay any further rent.

In response to the tenant's testimony the landlord testified that:

- The tenants had told him that they were having difficulty affording the rent and would likely vacate sometime in the winter however he was not aware that they were going to be moving out on October 2, 2010.
- There were some repairs done in the rental unit after the tenants vacated, including painting, repairs to the built-in vacuum, repairs to the gas fireplace, and the painting of some outdoor trim, however these repairs took little time and since the tenants had left the rental unit in very good condition the unit was ready for occupancy immediately.
- He advertised the rental unit online on two sites commonly used by people looking for rentals.

- He was actively attempting to re-rent the unit however was unable to do so until January 15, 2011 as stated earlier, and only after reducing the rent by \$200.00 per month.
- He did tell the tenants they had left the unit in good condition because they had done an excellent job of cleaning the rental unit however he never agreed to an early end to the fixed term tenancy. The choice to vacate early was strictly the tenants.

Analysis

When parties enter into a fixed term tenancy it is for the protection of both the landlord and tenant.

The tenant has the security of knowing that they will not be required to vacate the rental unit prior to the end of the fixed term.

The landlord has the security of knowing that the rental unit is going to be occupied to the end of that fixed term and that he will be collecting a fixed amount of rent to the end of that term.

However that also means that both parties are bound by that fixed term tenancy agreement, and therefore if one of the parties unilaterally breaches the terms of the tenancy agreement, they can be held liable for any loss resulting to the other party.

In this case the tenants unilaterally ended the tenancy before the end of the fixed term and therefore they are liable for any loss that results to the landlord.

The landlord does have an obligation to attempt to mitigate the loss, however it is my finding that the landlord did take reasonable steps to attempt to re-rent the rental unit, including advertising and eventually lowering the rent.

I do not accept the tenant's argument that the rental unit caused the delay in the availability of the unit for re-renting, as none of the work done would likely have interfered with the occupancy of the rental unit.

Therefore it is my decision that the tenants are liable for the full amount of lost rental revenue suffered by the landlord.

Conclusion

I have allowed \$7,438.61 of the landlords claim. The landlord may therefore retain the full security deposit of \$950.00 and have issued an order for the tenants to pay \$6,488.61 to the landlord. The remainder of the landlords claim is dismissed without leave to reapply.

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: February 04, 2011.

Residential Tenancy Branch