

DECISION

Dispute Codes MNR, FF

Introduction

This is an application filed by the Landlord for a monetary order for unpaid rent and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony.

At the beginning of the hearing the Landlord specified that the monetary order was being sought for lost rental income due to the Tenant breaching the fixed term tenancy prematurely as the details of dispute show.

The Landlord states that he did not receive the Tenant's 20 page evidence package. The Tenant claims that the evidence was sent to the Landlord by email. The Tenant states that he has no proof of service or confirmation that the Landlord received his evidence. As the Tenant has no evidence or proof of service to confirm the Tenant's evidence was received by the Landlord, I must refuse the Tenant's evidence in consideration of the Landlord's claim. I note however that the Tenant's evidence offer no evidence of value, but contains the Tenant's submissions regarding this claim.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for compensation for loss of rental income under the Act, regulation or tenancy agreement?

Background and Evidence

Both parties agreed that the Tenancy began on January 14, 2010 on a fixed term tenancy to end on July 31, 2011. A monthly rent of \$1,300.00 was established for the entire premises. A security deposit of \$650.00 was paid. The Landlord has submitted no evidence to support his claim.

The Landlord claims that the Tenant breached the fixed term tenancy by ending the tenancy on October 31, 2010. The Tenant confirmed this claim. The Landlord is claiming \$3,600.00 in lost rental income. The Landlord states that he was able to re-rent ½ of the premises for \$650.00 starting on November 8, 2010 on a fixed term until

May 31, 2011. The Landlord is seeking \$4,723.33 for 7 months until the house was sold on June 1, 2011. The Landlord notes payments received from the Tenant totalling, \$1,123.33. The Tenant has made no comment in response to the Landlord's claim.

The Landlord claims that the Tenant would forfeit the \$650.00 security deposit to pay for the hiring of a property management and their fee. The Tenant confirms this.

Analysis

As both parties have attended the hearing by conference call, I am satisfied that the Tenant has been properly served with the notice of hearing documents. The Landlord has provided no evidence to support his claim. The Tenant's evidence is refused as he has failed to properly serve the Landlord.

I find based upon the direct testimony of both parties on a balance of probabilities that the Landlord has established a claim for loss of rental income for the month of November. I note that the Landlord has already received payment for this amount of \$823.33 from the Tenant for the month of November. This portion of the claim is resolved. The Landlord has failed to provide any evidence to mitigate his losses in recovery of the rent for ½ of the rental unit from December 1, 2010 until the sale of the property on June 1, 2011. As such, I dismiss the Landlord's remaining portion of his claim for \$3,900.00 (\$650.00 per month until May 31, 2011).

Conclusion

The Landlord's claim is dismissed.

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: August 25, 2011.

Residential Tenancy Branch