

DECISION

Dispute Codes MNR

Introduction

This is an application filed by the Landlord for a monetary order for unpaid rent.

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

At the beginning of the hearing, clarification from the Landlord determined that there was no unpaid rent, but that the Landlord was seeking a monetary order for compensation for loss of rental income. Both parties confirmed their understanding of the clarification.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order for compensation for loss of rental income?

Background and Evidence

Both parties agreed that this tenancy began on September 15, 2010 on a fixed term tenancy until March 31, 2011 as shown in the submitted signed tenancy agreement. The monthly rent was \$900.00 payable on the 1st of each month. A security deposit of \$450.00 was paid on August 23, 2010. Notice to vacate the rental unit was given in writing to the Landlord on October 31, 2010 for a move out by the end of November 2011.

Both parties have confirmed receiving the notice of hearing and evidence packages filed by the other.

The Landlord is seeking to claim \$3,600.00 (\$900.00 X 4 months) in lost rental income from December 1, 2010 until March 31, 2011. The Landlord states that the Tenant made complaints of excessive noise, but that the Landlord upon investigation with the Strata was unable re-rent the unit. The unit remained empty until the end of the term. The Landlord's witness, P.D. gave evidence that no noise complaints were ever received, but gave contradictory testimony when confronted with an email from him to the Tenant. The witness, P.D., stated that if it was in writing with his name on it, it was true. The Tenant provided a witness, S. L., a strata council member and caretaker

confirmed the Tenant's numerous noise complaints and clarified the noise issues from the unit above. The Tenant disputes that the unit remained empty because of the notice of noise being given to each prospective tenant. The Tenant's witness confirmed this.

Analysis

As both parties have attended the hearing by conference call and have confirmed receipt of the evidence packages, I am satisfied that each has been properly served.

I find that there was a breach of the tenancy agreement by the Tenant. The tenancy clearly ended at the end of November 2010 as opposed to the fixed term ending March 31, 2011. The Tenant failed to follow the proper course in resolving this issue with the Landlord in an application for dispute. However, the Landlord has failed to establish a claim for the lost rent income because of the Tenant's actions. Based upon the contradictory evidence of the Landlord's evidence and the testimony of the Tenant and her witness, I find that the Tenant was not responsible for the inability of the Landlord to re-rent. I find that the likely cause was because of the ongoing noise issues with the other Tenant. As such, I dismiss the Landlord's application.

Conclusion

The Landlord's application 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 26, 2011.

Residential Tenancy Branch