



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNDC, MNR, MNSD, OPB, OPR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting him to retain the security deposit in partial satisfaction of the claim. The landlord appeared at the hearing as did the tenant A.S. who represented both tenants.

The tenants had already vacated the rental unit by the time the landlord made his application and I therefore consider the claim for an order of possession to have been made in error as possession of the unit has already been surrendered to the landlord.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The tenancy began on January 1, 2011 and was set to run for a fixed term ending on January 1, 2012. The parties agreed that in mid-June, the tenants verbally advised the landlord that they would be vacating the rental unit on August 1. The tenants claimed that they had asked the landlord if he would agree to them ending their tenancy; the landlord denied having agreed and testified that he specifically told the tenants that he considered their tenancy to be continuing to the end of the fixed term.

The landlord testified that he began advertising the unit in August, conducted a few interviews in September and was unable to re-rent the unit until November 1. He seeks to recover lost income for the months of August – October inclusive.

The landlord further seeks to recover the cost of repairing the asphalt driveway. He testified that because the tenants parked a heavy truck on the driveway, it badly damaged it and turned it to rubble. The tenants testified that when they moved into the unit in January, the driveway was covered in snow and they had no idea what its condition was and further testified that neighbours had told them that the driveway had been in poor condition for some

time. The landlord testified that he had owned the unit for approximately 5 years and that he did not know how old the driveway was. I note that 2 days before the hearing, the landlord faxed photographs of the driveway to the Residential Tenancy Branch. Unfortunately, the faxed transmission did not provide clear photographs and the images were completely dark.

Analysis

The tenants were obligated to continue their obligations under the tenancy agreement until the end of the fixed term. However, upon providing notice to the landlord that they would be breaking the lease, the landlord's obligation to mitigate his losses was triggered pursuant to section 7(2). He was obligated to act reasonably to minimize his loss and I find that waiting until sometime in August, after the tenants had vacated the unit, was not reasonable. I accept that the landlord suffered a loss of income, but absent proof that he acted reasonably to minimize his loss, his claim cannot succeed. For this reason I dismiss the claim for loss of income.

With respect to the damage to the driveway, the landlord has the burden of proving that the tenants caused the damage and that the damage extended beyond what may be considered reasonable wear and tear. I find that the landlord has provided insufficient evidence to prove that the driveway was in significantly better condition at the outset of the tenancy and in the absence of such evidence, I am unable to determine whether the damage to the driveway can be characterized as reasonable wear and tear. Further, the landlord did not know the age of the driveway. Residential Tenancy Policy Guideline #37 identifies the useful life of an asphalt driveway as 15 years. Without evidence as to the age of the driveway, it is impossible to determine whether it has lost any of its useful life. I find that the landlord has not proven this claim on the balance of probabilities and the claim is dismissed.

As the landlord has been unsuccessful, he must bear the cost of the filing fee paid to bring this application.

Conclusion

The claim is dismissed 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: January 20, 2012

Residential Tenancy Branch