



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR

Introduction

A substantial amount of documentary evidence, photo 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 \$4990.00.

Background and Evidence

The applicants testified that:

- The tenants signed a fixed term tenancy agreement with an expiry date of July 1, 2012.
- Rent was set at \$1550.00 per month, and the tenants agreed to pay an extra \$100.00 per month for utilities, for a total monthly payment of \$1650.00.
- The tenants paid a security deposit of \$1450.00.
- On December 29, 2011 the tenants gave notice that they would be vacating the rental unit at the end of January 2012.

- The tenants paid no rent for the month of January 2012 and instead told the landlord to use their security deposit to cover the rent, however since the deposit was only \$1450.00 they were \$200.00 short of the amount owed for rent and utilities.
- As soon as the tenants informed him they were vacating they started advertising the unit for rent hoping to fill it as soon as possible, however to date they have been unable to do so.
- The tenants provided them with a rental prospect, however they were not suitable as they had a large dog, there were five adults and only one bathroom in the unit, they only wanted short term, and they were unable to contact one of the references.

They are therefore requesting a monetary order as follows:

Rent/utilities outstanding for January 2012	\$200.00
Lost rental/utility revenue for Feb. 2012	\$1650.00
Lost rental/utility revenue for March 2012	\$1650.00
Lost rental/utility revenue for April 2012	\$1650.00
Total	\$5150.00

They are requesting an order for \$4990.00 to stay below the \$5,000 amount at which the filing fee increases.

The respondent testified that:

- They did break a fixed term lease, however they found new tenants for the landlord that were perfectly suitable and therefore the landlord did not need to lose any rent.
- When the landlord rejected their prospective tenants without giving any reasons, they believed the landlord had other tenants lined up and therefore they did not attempt to find any other tenants for the landlord.
- Had the landlord informed them that they still had not found tenants, they would have attempted to find new tenants to replace them.

- When they became aware that the landlord had not found new tenants they again offered to try and find tenants for the landlords however the landlords did not allow them to do so.
- They do not believe the landlord took reasonable steps to try and re-rent the unit as they have only been able to find a few ads over the three-month period that the rental unit was empty.
- They therefore do not believe that they should be held liable for any of the landlords lost rental revenue.
- They also do not believe they should be held liable for any utilities as the unit has been empty and they are not using any utilities.
- The reason they pay nothing further for January 2012, is because they paid a security deposit of \$1650.00 at the beginning of the tenancy.

Analysis

It is my finding that the landlord has shown that there is \$200.00 rent/utilities outstanding for January 2012, as the tenants have signed a document which states that the security deposit is \$1450.00. Therefore since the tenants paid no rent for the month of January 2012 and told the landlord to keep the security deposit towards it, there is still \$200.00 outstanding.

I also allow a portion of the landlords claim for lost revenue. I will allow lost rental revenue and utilities for the first half of February 2012.

I dismissed the remainder of the landlords claim however because the tenants found prospective replacement tenants to take over their lease as of February 15, 2012, however the landlords rejected those tenants without giving any reasons. By not giving reasons at the time of the rejection the tenants were put in a position of being unable to rectify and possibly correct any problems with the prospective tenant's application.

The landlords are now claiming there were numerous reasons why the prospective tenants were rejected, however none of those reasons were communicated to the tenants at the time of the rejection.

Section 34 of the Residential Tenancy Act states:

Assignment and subletting

34 (1) Unless the landlord consents in writing, a tenant must not assign a tenancy agreement or sublet a rental unit.

(2) If a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold the consent required under subsection (1).

This was a fixed term tenancy agreement for more than six months and it is my decision that by failing to give reasons for not accepting the prospective tenants, the landlords were unreasonably withholding their consent.

Conclusion

I have allowed \$1025.00 of the landlords claim, and the remainder of the 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: April 10, 2012.

Residential Tenancy Branch