



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order authorizing her to retain the security deposit. Both parties participated in the conference call hearing.

At the outset of the hearing, I advised the landlord that I would dismiss her claim against the security deposit. The parties were in a previous hearing held on May 15, 2012 and the security deposit was addressed in that hearing. Because the deposit had already been dealt with, that matter cannot be reopened in a new hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on October 1, 2011, rent was set at \$1,075.00 per month and the tenancy was set to run for a fixed term ending on September 30, 2012. They further agreed that the tenants ended the tenancy on February 29, 2012. A previous dispute resolution hearing addressed the ending of the tenancy and during that hearing, the dispute resolution officer determined that the landlord was entitled to retain rent for the month of March as she had acted reasonably to mitigate her losses.

The landlord seeks to recover lost income for the period from April 1 – June 23, totalling \$2,971.18 as well as \$47.00 in increased insurance costs incurred because the rental unit was vacant and a \$25.00 NSF fee for a cheque she attempted to negotiate in April.

The landlord testified that she attempted to secure a new tenant in the months in question, daily placing ads on Craigslist and Kijiji and corresponding with a significant number of parties who responded to those advertisements. She stated that she attempted to find tenants who would commit to a fixed term, but was willing to make the

unit available as a vacation rental for those who were willing to pay an additional \$225.00 per month.

The tenants argued that the landlord had not acted reasonably in her attempts to mitigate her losses because she had placed a "For Sale" sign at the unit which would have discouraged prospective renters. They further argued that she should not have attempted to charge higher rent and suggested that her screening process for prospective tenants was so selective that she screened out good candidates.

One tenant testified that she telephoned the landlord and posed as a prospective tenant, only to be told that the property was only available on a month-to-month basis, that the rent was \$1,295.00 per month and that pets were not allowed. The tenants had been permitted to have pets during their tenancy and felt this was an unreasonable restriction.

Analysis

The tenants had no apparent legal basis under which they could terminate the fixed term lease prior to the end of the term and would normally be held responsible for rent throughout the term. However, when the landlord learned that the tenants would be breaching the agreement, she had an obligation to mitigate her losses by acting reasonably to re-rent the unit. I am unable to find that her attempts in April and thereafter were reasonable.

While I accept that the landlord continuously advertised the unit, I find that by raising the rent for month-to-month rentals and refusing to permit pets, the landlord changed the nature of the tenancy significantly enough to deter prospective tenants. I find that the landlord was obligated to offer the rental unit to prospective tenants on the same terms as she did to the tenants.

For this reason, I find that the landlord has failed to act reasonably to mitigate her losses and I dismiss her claim for loss of income for April – June. Because of this finding, the claim for increased insurance costs and the cost of the NSF cheque must also fail as I find that the tenants cannot be held responsible for losses incurred during this period.

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: August 13, 2012

Residential Tenancy Branch