



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income and to recover the filing fee for this proceeding.

Issue(s) to be Decided

1. Is the Landlord entitled to compensation for lost rental income?

Background and Evidence

This fixed term tenancy started on March 1, 2012 and was to expire on December 31, 2012 however it ended on June 30, 2012 when the Tenants moved out. Rent was \$1,720.00 per month payable in advance on the 1st day of each month. The Tenants gave written notice on April 6, 2012 that they would be ending the tenancy effective June 30, 2012.

The Landlord's agent said she advertised the rental unit in a number of public online websites as well as on the Landlord's website. The Landlord's agent said she did a number of showings of the rental unit to prospective tenants but could not find someone willing to re-rent the rental unit until August 1, 2012. The Landlord's agent provided 15 forms containing the dates and names of people who she claimed she showed the rental unit to during April, May and June 2012.

The Tenants disputed that the Landlord made reasonable attempts to re-rent the rental unit and in particular argued that the Landlord's agent did not show the rental unit more than 3 times and that no showings occurring during the last month of the tenancy. The Tenants said neither of them currently work so that one of them or their children would have been home at all times. The Tenants also said that the Landlord's agent would call them prior to a showing however, she left them no messages (other than for the 3 occasions in question) and their answering machine showed that they did not miss any of her calls if she did not leave a message. The Tenants argued that the Landlord's agent did not believe the rental unit would show well while it was occupied and therefore made no attempts to show it during the last month of their tenancy.

Analysis

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

I find that the Parties had a fixed term tenancy that was not supposed to end until December 31, 2012 however the Tenants ended it on June 30, 2012. Consequently, I find that the Tenants are technically liable for any lost rental income incurred by the Landlord. However, the Tenants argued that the Landlord did not take reasonable (or any) steps to try to re-rent the rental unit during the last month of their tenancy by making showings. The Landlord's agent disputed this and provided slips of paper which she claimed showed that seven showings were done in the month of June 2012.

I find that the slips of paper provided by the Landlord are hearsay and unreliable because the people identified on them as prospective tenants did not attend the hearing to give evidence. Consequently, I give this documentary evidence little weight. Given the contradictory evidence of the Parties as to whether the Landlord did any showings of the rental unit in June 2012 and in the absence of any reliable corroborating evidence from the Landlord (who bears the onus of proof) to resolve the contradiction, I find that there is insufficient evidence to conclude that the showings occurred in June 2012 as alleged. As a result, I find that there is insufficient evidence to conclude that the Landlord took reasonable steps in June 2012 to try to re-rent the rental unit for July 2012 and accordingly, its application for lost rental income is dismissed without leave to reapply.

Conclusion

The Landlord's application 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: October 02, 2012.

Residential Tenancy Branch