



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: *MNR*

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income when the tenant ended the tenancy prior to the end date of the fixed term.

The landlord testified that he served the notice of hearing on the tenant by registered mail to his forwarding address. The landlord provided a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Issues to be decided

Did the landlord make adequate efforts to mitigate his losses? Is the landlord entitled to a monetary order for loss of income?

Background and Evidence

The landlord testified that the tenancy started on February 01, 2012 for a fixed term ending January 31, 2013. The monthly rent was \$2,650.00 payable on the first day of each month.

On July 30, 2012, the tenant gave the landlord notice to end the tenancy effective August 20, 2012 due to the loss of his employment. The tenant offered to sublet the unit for the remainder of the term, but the landlord refused to let him do so. The landlord's agent advertised the availability and found a tenant for September 01, 2012.

The prospective tenants agreed to a one year fixed term but requested that it continue on a month to month basis after the end of the fixed term. The landlord did not agree and insisted that the prospective tenants would have to move out at the end of the fixed term. The landlord's agent attempted to mediate an agreement between the landlord and the prospective tenants, without success. The landlord filed a copy of the correspondence between the parties.

The landlord is claiming loss of income for the balance of the fixed term in the amount of \$13, 250.00.

Analysis

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non –compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent and reasonable terms. In this case the landlord wanted a fixed term which required the new tenants to move out at the end of the fixed term and refused to accept new tenants that wanted to continue on a month to month basis after the end date of the fixed term. In addition, the tenant's offer to sublet the unit for the remainder of his fixed term was turned down by the landlord.

Based on the evidence filed by the landlord himself, I find that by unreasonably refusing to rent to prospective tenants, the landlord suffered a loss of income. The landlord also unreasonably refused to allow the tenant to sublet the unit for the balance of the fixed term. The legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claim. In this case I do not find that reasonable efforts were made by the landlord to prevent the loss and therefore I find that the landlord is not entitled to his claim for loss of income.

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: December 04, 2012.

Residential Tenancy Branch