



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent and the tenant.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 45, 67, and 72 of the *Residential Tenancy Act* (Act).

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on September 11, 2011 for a 19 month fixed term tenancy beginning on October 1, 2011 for a monthly rent of \$1,650.00 due on the 1st of each month with a security deposit of \$825.00 paid.

The landlord submits that the tenant terminated the tenancy at the end of September 2012. The landlord also submits that he re-rented the unit effective October 15, 2012 for rent in the amount of \$1,500.00 per month.

The landlord seeks compensation in the amount of \$85.23 for the difference in the rent paid by the tenant for October of \$825.00, the amount the new tenant paid and the amount of rent that was due accordance to the original tenant's tenancy agreement.

The landlord also seeks compensation for the difference in the amount of rent this tenant would have owed for the full length of the tenancy and the amount of rent the new tenant is paying under the new tenancy agreement. The amount sought is \$150.00 per month for 6 months or \$900.00.

The tenant testified that he had only entered into the tenancy agreement originally because the landlord had indicated that he would see if he could get a rent reduction

because the rental amount was over what he had wanted to pay and he did not want to enter into a fixed term tenancy of more than 1 year for that high an amount.

The tenant submits that the landlord never did lower the rent and he was required to pay the full rent until he determined that he could just no longer afford this increased amount. He stated that he had also attempted to help the landlord find a new tenant from June 2012 until he had to give is notice to vacate the property for the end of September 2012.

The tenant testified that while he was showing the unit no one he showed it was willing to pay rent in the amount of \$1,650.00.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

As such a tenant providing notice to end the tenancy prior to the end date of the fixed term remains responsible for the payment of rent until the end of the fixed term. However the landlord does have the obligation to take all reasonable steps to mitigate any losses he may suffer as a result of the tenant's failure to complete the fixed term.

Despite the tenant's testimony that he had had agreement with the landlord to seek out a lower rent, the tenant provided no evidence of such an agreement and the tenancy agreement clearly stipulates the rent to be \$1,650.00. As such, I find the tenant is responsible for the payment of rent until the end of the fixed term tenancy.

Based on the testimony of both parties I find that parties were trying to rent the unit to a new tenant for at least 3 months and they were unable to find any new tenants. The tenant's own testimony confirms that no one was willing to rent the unit at the price he was paying.

Therefore, I find that after 3 months of trying to re-rent the unit the landlord had taken all reasonable steps to re-rent the unit. I also find that entering into a new tenancy

agreement at lower rental rate than what the tenant was paying after this length of time to trying to re-rent it was a reasonable action for the landlord to take.

Conclusion

Based on the above, I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$1,035.23** comprised of \$985.23 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenant. If the tenant fails to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 16, 2013

