



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Decision

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a monetary order for unpaid rent. The application was submitted on October 9, 2012, but was amended on November 6, 2012. The landlord is claiming compensation of \$25,000.00.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained. The participants had an opportunity to submit documentary evidence prior to this hearing, and the evidence has been reviewed. The parties were also permitted to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation for unpaid rent?

Background and Evidence

Submitted into evidence were copies of communications, written statements from the participants, a copy of the tenancy agreement, copies of advertisements, illustrations of the house layout, proof of service and a copy of the move-out condition inspection report.

Landlord's Evidence

The landlord testified that the tenancy began on March 7, 2012 with rent of \$4,200.00 per month and a security deposit of \$2,100.00 was paid. The tenancy agreement in evidence shows that the agreement was for a fixed term of "*12 months*", but does not

show a specific expiry date that would normally be written in the box on the standard tenancy agreement form beside the notation, "*ending on*_____".

The landlord testified that, on August 22, 2012, the tenant gave written notice to move, effective September 30, 2012. The landlord testified that the tenant was given an opportunity to find a new tenant to sublease the premises for the remaining period of the fixed term, but was not successful. The landlord testified that the tenant vacated the rental unit on September 30, 2012, prior to the 12-month expiry of the fixed term.

The landlord testified that, because the tenant had contravened the fixed-term agreement by prematurely terminating tenancy, the landlord was forced to seek an immediate sale of the rental property. The landlord testified that the property was sold and the sale closed on November 29, 2012.

The landlord stated that he is claiming the maximum compensation allowed under the Residential Tenancy Act. The landlord pointed out that, because tenant prematurely terminated the tenancy, the landlord was placed in a position where the home had to be sold quickly, and this fact ultimately resulted in his receiving a much lower sale price than if the tenancy had continued to full term.

The landlord stated that, in addition to the above, he incurred a loss of rental revenue in the amount of \$4,200.00, from October 7, 2012 to November 7, 2012, during which the unit was vacant. The landlord testified that there was also a loss of revenue for 21 days in the amount of \$2,899.00, from November 7, 2012 until the closing date of the sale, which transpired on November 29, 2012.

Tenant's Evidence

The tenant argued that the landlord had violated the tenancy agreement by placing the home for sale during their tenancy, and by offering purchasers a possible closing date prior to the expiry of the fixed-term.

The tenant testified that, because they were fearful that the landlord would sell the property during the tenancy and that this would result in their being forced to vacate, they decided to find other accommodation.

The tenant testified that they attempted to find a renter willing to take over the remaining four months of their fixed-term tenancy. According to the tenant, the fact that there was only a short period left before the tenancy expired, hindered their attempts to find anyone to sublet. The tenant testified that the landlord was unwilling to mitigate by extending the remaining rental period, in order to help the tenant find another renter willing to take over the lease. The tenant testified that the fact that the landlord

was actively trying to sell the home at the same time that they were seeking a potential renter to take over the lease, functioned as a further deterrent to potential renters.

The tenant pointed out that a realty sign was erected on the lawn on October 5, 2012 and, according to the tenant, this confirmed that, as of October 5, 2012, the landlord was obviously not making any reasonable effort to re-rent the home to mitigate the loss of rental revenue.

The tenant disputes the landlord's entire monetary claim and takes the position that the landlord is not entitled to any compensation. The tenant stated that the landlord should therefore return the tenant's security deposit in full.

Analysis

With respect to an Applicant's right to claim damages from another party, section 7 of the Act states that if a landlord or tenant does not comply with the Act, the regulations or the tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act grants a dispute Resolution Officer the authority to determine the amount and to order payment under these circumstances.

In a claim for damage or loss under the Act, the party claiming the damage or loss bears the burden of proof and the evidence furnished by the applicant must satisfy each component of the test below:

Test For Damage and Loss Claims

1. Proof that the damage or loss exists,
2. Proof that this damage or loss happened solely because of the actions or neglect of the Respondent in violation of the Act or agreement,
3. Verification of the actual amount required to compensate for the claimed loss or to rectify the damage,
4. Proof that the claimant followed section 7(2) of the Act by taking reasonable steps to mitigate or minimize the loss or damage.

I find that the tenant did contravene the tenancy agreement by ending the agreement prior to the expiry date.

I find that the tenant's argument that the landlord had violated the agreement, by placing the home for sale during the tenancy, has no merit. Under the Act a landlord is at liberty to list the rental property for sale and show it to potential buyers. However, the landlord

or purchaser would not be permitted, under the Act, to terminate the tenancy until the expiry of the fixed term, regardless of new ownership. I find that the tenant's occupancy to the end of the fixed term was not in jeopardy.

I find that the landlord's claim for compensation for the loss incurred by having to sell the home at a lower price does not meet elements 2 and 3 of the test for damages, because the landlord has not adequately proven that a quantifiable loss occurred directly due to the tenant's violation of the agreement.

With respect to the claimed loss of revenue for the period from October 7, 2012 to November 29, 2012, I find on a balance of probabilities, that, as of October 5, 2012, when the realty sign was posted, the landlord was likely focussing his marketing efforts on potential buyers and ceased making a reasonable attempt to re-rent the home to a new tenant for the remaining four months of the tenancy fixed term.

Based on the evidence before me, I find that the landlord is not entitled to be compensated for rent or loss of revenue from November 7, 2012, until November 29, 2012 when the ownership changed hands.

However, during the period prior to October 7, 2012, it is clear that the landlord did make reasonable attempts to re-rent just after the tenant gave written notice in August 2012, and was trying to find a replacement tenant. I find that the landlord also supported the tenant in his efforts to locate a renter to take over the remaining period still under lease.

For this reason, I do accept that the landlord's position that he did try to mitigate the loss of rental income to a degree. Based on this finding, I conclude that the landlord is entitled to be reimbursed for a portion of the loss of revenue incurred for the period from October 7 to November 7, 2012, and I set this proportion at 50% of the \$4,200.00 rental income loss for that period.

Given the above, I find that the landlord has established a total monetary claim of \$2,100.00, representing half of the loss of revenue incurred between October 7 and November 7, 2012. As the landlord has only been minimally successful in the application, I find that the landlord is not entitled to be reimbursed for the cost of filing.

I hereby order that the landlord retain the tenant's security deposit of \$2,100.00 in full satisfaction of the claim. The remainder of the landlord's monetary claim is dismissed.

Conclusion

The landlord is partially successful in the application and is entitled to retain the tenant's security deposit in full satisfaction of the claim.

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 14, 2013

Residential Tenancy Branch

