



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act*, for a monetary order for loss of income, the filing fee and to retain the security deposit in partial satisfaction of his claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

This hearing was initially conducted on November 14, 2012 and a decision was issued that same day. The landlord applied for a review of the decision and was granted a new hearing. The hearing was scheduled for February 15, 2013 and was adjourned to this date – March 13, 2013, to allow the parties additional time to exchange evidence.

The landlord did not file any additional evidence. The tenant filed additional evidence in the form of a USB drive, a copy of which was provided to the landlord.

The tenant stated that he had not received the original evidence filed by the landlord and had no documents at all in front of him during the hearing. The landlord argued that the evidence was attached to the notice of hearing which was served to the tenant at his place of work.

The landlord's evidence consists of email and text correspondence between the two parties. Some of the emails were discussed during the hearing on February 15 and have been used in the making of this decision. As this matter was conducted over two separate days and almost 3 hours of hearing time, I have considered all oral testimony provided by the parties but have not necessarily alluded to all the testimony in this decision.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income, and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The tenancy started on April 15, 2012 for a fixed term with an end date of April 30, 2013. Rent was \$2,250.00 due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$1,125.00 and a pet deposit of \$1,125.00.

On July 24, 2012, the tenant gave the landlord notice to end the tenancy effective August 30, 2012. The landlord immediately started looking for a new tenant. The landlord stated that he initially advertised the unit for a raised rent of \$2,400.00. A week later on August 23, 2012 the landlord changed the advertisements to indicate that the rent was \$2,250.00.

The landlord stated that he had rented this unit at a higher rent in the past and he may have inadvertently used the same advertisement from his files without making the change to the rental amount. When he realized that the unit was advertised at a higher rent, he immediately changed the rent back to the current rent of \$2,250.00.

The landlord testified that he advertised the unit multiple times on two popular websites but did not receive a lot of interest. However, he did receive some calls and had some showings. The tenant agreed that there were at least two showings prior to his moving out.

The tenant testified that the evidence he provided shows that the landlord did not advertise enough and did not renew the advertisement regularly on one website. He stated that often the advertisement would be several pages deep on the website. The tenant cited examples of advertisements on dates in September and October that were not on the first page and were as far down as page 11. The tenant stated that this showed that the landlord was not doing his best to mitigate his losses.

The landlord testified that he advertised regularly and used multiple accounts to do so. He stated that using filters to narrow a search would bring his listing to the first page. The tenant responded that upon using filters the advertisements were still several pages deep and most people would look no further than the initial pages.

The tenant also stated that the landlord did not make efforts to find a renter because he was aware that the *Residential Tenancy Act* had provisions to compensate him for his loss of income when a tenant breached the terms of the tenancy agreement.

The landlord testified that the loss of income caused him hardship and he had trouble paying the mortgage. He stated that he made several efforts to find a renter and attributed his lack of success to the seasonal variation in the rental market.

The landlord denied the tenant's allegations that he relied on this application for dispute resolution to cover his loss of income and stated that he did his best to find a new tenant.

The landlord finally found a tenant for February 01, 2013 and is claiming the loss of income he suffered for the months of September 2012 to January 2013.

Analysis

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord 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.

By ending the tenancy prior to the end date of the fixed term, the tenant breached the agreement and therefore the landlord is entitled to damages in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenancy could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by making attempts to re-rent the unit.

Section 7(2) of the *Residential Tenancy Act*, states that a landlord who claims compensation for loss that results from the tenant's non compliance with the tenancy agreement must do whatever is reasonable to minimize the loss.

Having found that the tenant breached the tenancy agreement, I must now determine whether the landlord made reasonable efforts to minimize his losses. In this case, I find that the landlord advertised the availability of the unit on two popular websites and had multiple showings, at least two of which were prior to the tenant moving out. Even though the landlord initially advertised at a higher rent, I accept his explanation that he may have done so in error and that he reverted to the original rent after one week.

The tenant's evidence indicates that the landlord did advertise the unit in the months of September and October which confirms the landlord's attempts to find a new tenant. I find that the tenant's testimony regarding the location of the advertisement on the website is subject to the popularity of the website, over which the landlord had little to no control.

Based on a balance of probabilities, I find that it is more likely than not that the landlord made reasonable efforts to rent the unit because it was not to his advantage to have the unit vacant or to rely on an arbitrator's decision to award him rental losses.

I find that the landlord made efforts to mitigate his losses and despite his efforts he suffered a loss of income in the amount of \$11,250.00 which is comprised of rent for the months of September 2012 to January 2013. I further find that the landlord is entitled to the recovery of this loss.

The landlord has proven his case and is therefore entitled to the recovery of the filing fee of \$100.00.

Overall the landlord has established a claim for \$11,350.00. I order that the landlord retain the security and pet deposits of \$2,250.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$9,100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order in the amount of **\$9,100.00**.

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: March 13, 2013

Residential Tenancy Branch

