



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MNDC

Introduction

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

The landlord served a copy of his application and the notice of hearing to the tenant by registered mail on February 28, 2013, to the forwarding address provided by the tenant. 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.

At the start of the hearing, the landlord withdrew his application for liquidated damages which he had referred to as a penalty for breaking the fixed term lease. Therefore this hearing only dealt with the landlord's claim for loss of income for the months of January to March 2013.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income? Did the tenant provide adequate notice to end the tenancy? Did the landlord make reasonable efforts to mitigate his losses?

Background and Evidence

The tenancy started on June 01, 2012 for a fixed term of one year. The monthly rent was \$2,750.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,375.00.

The landlord filed a copy of the text message conversation between the two parties. On December 01, 2012, the tenant informed the landlord that she would be ending the tenancy and moving out on December 31, 2012.

The landlord requested the tenant to move out in January as it would be difficult to find a tenant at that time of year. The tenant agreed to rent the unit until January 15, 2013.

On December 26, 2012, the landlord started advertising the availability of the rental unit for February 01, 2013, at an increased rent. He stated that he finally found a tenant for April 01, 2013. The landlord filed copies of advertisements and stated that he started off by advertising at a higher rent but eventually lowered it to find a tenant.

Despite agreeing to rent the unit until January 15, 2013, the tenant messaged the landlord on December 30, 2012, to say that she had moved out and requested a move out inspection for December 31. The landlord agreed to meet at the rental unit, but the appointment was subsequently cancelled by the tenant. A few more attempts to meet were unsuccessful as a mutually convenient time could not be found.

On January 07, 2013, the tenant informed the landlord that he could pick up the keys from a certain location. She also mentioned that she had left a few boxes behind, was going away on holiday and would return mid January.

The tenant's rent cheque for January was cancelled by the tenant. On February 02, 2013, the tenant gave the landlord her forwarding address with a request for the return of the security deposit. I briefly informed the landlord about his responsibilities with regard to the return of the security deposit and encouraged him to visit the Residential Tenancy Branch website for more information. The landlord stated that he would deal with the return of the security deposit separately. The landlord is claiming a loss of income for three months in the amount of \$8,250.00.

Analysis

Section 45(2) 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:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

The tenant moved out December 30, 2012, prior to the end date of June 30, 2013. Therefore the landlord is entitled to any loss of rent up to the earliest time that the tenant could have legally ended the tenancy. 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.

Residential Tenancy Policy Guideline#3 states that 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. Attempting to re-rent the premises at an increased rent will not constitute mitigation.

In this case the landlord was informed of the tenant's intention to end the tenancy on December 01, 2012 but started advertising the unit on December 26, 2012 for an increased rent for availability as of February 01, 2013. Therefore I find that the landlord did not make sufficient attempts to mitigate his losses and is not entitled to the loss of income he suffered for February and March 2013.

However, the tenant did agree in writing to continue to rent the unit up to January 15. Since the tenant gave notice on December 01, 2012 and rent is due on the first of each month, I find that the earliest time that the tenant could legally have ended the tenancy by providing notice on December 01, 2012, was January 31, 2013. In addition the tenant's belongings remained in the rental unit for part of January. Therefore I find that the landlord is entitled to rent for the month of January 2013 in the amount of \$2,750.00.

I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the amount of \$2,750.00. 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 for the amount of **\$2,750.00**.

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: April 22, 2013

Residential Tenancy Branch

