



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, 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 and the tenant's agent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue 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 December 21, 2012 for a 6 month fixed term tenancy beginning on January 1, 2013 for a monthly rent of \$1,000.00 due on the 1st of each month with a security deposit of \$500.00 paid. The tenant is a company conducting business in the area and sought to have housing from some of its staff.

The landlord submits that when he rented the unit to the tenant he agreed that it would be two men living in the rental unit and they did initially until late March 2013 at which time the tenant sent over a new occupant for the property. The new occupant and the landlord had a verbal altercation regarding a discussion around the landlord's access to the rental unit to conduct maintenance on the property. The landlord acknowledges calling the new occupant a derogatory name.

The tenant's agent submits that as a result of the altercation he sent an email to the landlord (provided into evidence by the landlord) advising that he believed the new occupant would be a suitable occupant for the property but that obviously the landlord did not. The tenant's agent stated also in the email that he did not appreciate his employee being called a name for no reason and as such the tenancy would end.

The landlord submitted that he had advertised the rental unit since March 30, 2013; had two viewings and was able to rent the unit to a new tenant effective July 1, 2013.

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.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

While I accept the tenant's agent provided the landlord with an email on March 26, 2013 stating that he was ending the tenancy, he makes no mention in the email that he felt the landlord had failed to comply with a material term of the tenancy agreement or gave him time to correct a breach of a material term.

Further, I note that by his testimony, the tenant's agent did not even discuss the issue of landlord's access with the landlord, he only sent the email of March 26, 2013. As such, I find the tenant failed to provide a notice to end tenancy in accordance with either Section 45(2) or 45(3).

As a result of this violation of Section 45 and based on the undisputed testimony of the landlord I find the landlord has suffered a loss of revenue in the amount of \$3,000.00, established by the agreed upon tenancy agreement. I am satisfied the landlord took reasonable steps to attempt to re-rent the unit but was unable to do so for the duration of the tenancy.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and grant a monetary order in the amount of **\$3,050.00** comprised of \$3,000.00 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: July 05, 2013

Residential Tenancy Branch

