



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

The landlords apply for a monetary award for loss of rental income for the period February to June 2013.

There was a previous hearing between the parties on February 28, 2013 under file 799693. The tenant made a preliminary objection to this application, arguing that the previous adjudication finalized the matter. The preliminary objection was successful.

Background and Evidence

The rental unit is a townhouse. The tenancy started in June 2009 pursuant to a series of fixed term tenancy agreements, the last of which was to expire on June 30, 2013. The monthly rent was \$1 115.00 at all relevant times.

The tenant breached the fixed term tenancy agreement and vacated the premises at the end of October 2012, some eight months short of the end of the term.

The landlords brought their first application shortly after and, on February 28, 2013, were successful in recovering rental loss for the months of November and December 2012. The arbitrator of that dispute dismissed the landlords' claim for January 2013 rental loss, holding that the landlords had failed to properly mitigate by taking "all reasonable steps as quickly and as frequently as they might have done...."

Analysis

By necessary implication, the previous arbitrator held that had the landlords taken "all reasonable steps as quickly and as frequently as they might have done" they would not have suffered a loss of January 2013 rental income because they likely would have found a new tenant.

It follows that had the landlords found a new tenant in January 2013, they likely would not have suffered a loss of rental income from the months February to June 2013.

The landlords' failure to mitigate back in January 2013 prevents them from claiming loss of rental income for subsequent months when they might have taken reasonable but unsuccessful steps to mitigate their loss

The previous arbitrator's findings and conclusion that the landlords failed to mitigate are not findings and a conclusion that I am at liberty to disturb. The tenant's preliminary objection is a valid one and is a full defence to the landlords' present claim.

The tenant also argued that the landlords' prior claim included this claim; for future loss of rental income to the end of the fixed term June 30, 2013. I make no determination about that. I do not have access to the actual application document under file 799693 and I note that the previous arbitrator's decision states that the landlords "are seeking three months of rent."

Conclusion

The landlords' application is dismissed.

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: August 02, 2013

Residential Tenancy Branch

