



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Landers' Lodge Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67; and
- authorization to recover their filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. Tenant TL, the Power of Attorney for her mother, the actual tenant, confirmed that she received copies of the landlords' dispute resolution hearing package sent to her and to her mother by the landlords by registered mail on October 1, 2013. I am satisfied that the landlords have served the Respondents with their hearing package in accordance with the *Act*.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent? Are the landlords entitled to recover the filing fee for this application from the Respondents?

Background and Evidence

The tenant (PH) moved into this 13-unit supportive housing property in 2006. Although no written Residential Tenancy Agreement was created by the landlords at that time, the tenant's daughter did not dispute the male landlord's (the landlord's) claim that monthly rent was initially set at \$1,300.00. Over time and after the landlords issued Notices of Rent Increase, the monthly rent increased to \$1,484.70 by the time the tenant's daughter moved her mother's belongings out of the rental unit by August 17, 2013. The landlord testified that three meals per day, housekeeping and laundry were included in the monthly payments made by the tenant for this independent living facility. The landlord described this as a monthly payment for "room and board." He did not have an exact breakdown of the component parts of the monthly payments made by the tenant to the landlords.

On July 16, 2013, the tenant's daughter said that she gave the landlords oral notice on her mother's behalf that she was planning to have her mother vacate the rental unit by August 1, 2013. When she could not relocate her mother as quickly as she was hoping, she told the landlord on August 15, 2013 that she would have her mother's belongings removed from the rental unit by August 17, 2013. The parties agreed that the tenancy ended on August 17, 2013, at which time the tenant's daughter surrendered the keys to the rental unit to the landlords.

The landlords' application for a monetary award of \$1,484.70 was for unpaid rent considered owing for September 2013. The only signed written agreement between any of the parties entered into written evidence was an August 19, 2013 statement signed by the landlord and the tenant's daughter in which, the landlord acknowledged that the tenant's daughter gave oral notice to end this tenancy on August 15, 2013, and vacant possession was surrendered to the landlords on August 17, 2013. This signed agreement noted that rent was due for September on September 1, 2013, as a result of the short notice by the tenant's daughter to end this tenancy.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a periodic tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for September 2013, the tenant would have needed to provide her notice to end this tenancy before August 1, 2013. Section 52 of the *Act* requires that a tenant provide this notice in writing.

I find that the tenant, and more specifically the tenant's daughter acting on her behalf on the basis of her power of attorney, did not comply with the provisions of section 45(1) of the *Act* and the requirement under section 52 of the *Act* that a notice to end tenancy must be in writing.

As such, the landlords are entitled to compensation for losses they incurred as a result of the Respondents' failure to comply with the terms of the oral tenancy agreement and the *Act*. There is undisputed evidence that the tenant did not pay any rent for September 2013. However, as I noted at the hearing, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

In this case, the landlord testified that he contacted officials from Interior Health and local mental health agencies to see if they knew of anyone who might be interested in re-renting this rental unit. He said that he also checked people on his waiting list, but as of the date of this hearing, the premises have not been re-rented. He testified that he and his wife, the female landlord attending this hearing, placed advertisements in local newspapers. Although neither he nor his wife were certain when the first advertisements were placed in the newspapers, he said that it was likely about October 25, 2013. When I asked about the two plus month delay in placing advertisements, he responded that he had to clean and paint the rental unit after this lengthy tenancy ended.

Based on the evidence presented, I am not satisfied that the landlords took sufficient measures to mitigate their losses for September 2013. In fact, by their own admission, the landlords did not place advertisements regarding the availability of this rental unit until October 25, 2013. Under these circumstances, I find that the landlords have failed to discharge their duty under section 7(2) of the *Act* to minimize the Respondents' exposure to losses for September 2013. For this reason, I dismiss the landlords' application for a monetary award for unpaid rent without leave to reapply. As the landlords have been unsuccessful in their application, I also dismiss their application to recover their filing fee from the Respondents.

Conclusion

I dismiss the landlords' application without leave to reapply.

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: November 26, 2013

Residential Tenancy Branch

