



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlords' application for dispute resolution under the Residential Tenancy Act (the "Act"). The landlords applied for a monetary order for unpaid rent and for recovery of the filing fee.

The landlords and tenant SV attended the teleconference hearing, the hearing process was explained, and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and both parties confirmed receipt of the other's documentary evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Are the landlords entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The undisputed evidence shows that this tenancy was set to begin on September 1, 2013, for a monthly rent of \$1600, and that the tenants never moved into the rental unit, citing sudden, unforeseen financial difficulties. The tenants paid a security deposit and

a pet damage deposit and the matter of the return of those deposits to the tenants was dealt with in another dispute resolution hearing before another Arbitrator on November 12, 2013. The Decision of the Arbitrator on November 12, 2013, awarded the tenants a monetary order of \$2050.

In their application, the landlords filed a monetary claim of \$1879, which was comprised of a "mortgage payment" of \$1600, fuel costs of \$150, and loss of wages for \$129.67.

The landlords submitted that they were entitled to \$1600, as the tenants failed to move into the rental unit, and the landlords were still in the position of having to make a mortgage payment on the rental unit as well as a mortgage payment on their place of residence.

In response to my question, the landlords confirmed that new tenants moved into the rental unit in September and paid rent of \$1600.

The landlords also submitted that they were entitled to fuel costs, as they had to travel back and forth from their home in another town to the rental unit to show the rental unit again.

The landlords submitted that they were entitled to loss of wages as the landlord JF had to take a day off work to file for dispute resolution.

The tenant response was to point out that the fuel receipts show charges for the beginning of August 2013.

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlords in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Mortgage payment-

I find the landlords and the tenants entered into a valid, enforceable tenancy agreement, and in the absence of a written tenancy agreement, that the agreement was on a month to month basis, and that the tenants were responsible to begin paying rent for September 1, 2013, according to the terms of the agreement, whether they moved in or not, pursuant to Section 16 of the Act.

I accept that the landlords' intent of seeking \$1600 was due to a loss of rent revenue as the tenants failed to move into the rental unit and start paying rent in September 2013.

As to the issue of loss of revenue, Section 45 (1) of the Act requires a tenant to give one clear calendar month before the next rent payment is due in giving written notice to end the tenancy. As such, when the tenants gave their notice on August 27, 2013, that they were not moving into the rental unit in September 2013, I accept that the tenants provided insufficient notice that they were ending the tenancy and were responsible to pay monthly rent to the landlords for that month, here, subject to the landlords' requirement that they take reasonable measures to minimize their loss, as required under section 7 of the Act.

In the case before me, I find the landlords complied with their obligation to find new tenants as soon as reasonably possible in order to minimize their loss, as they had new tenants move into the rental unit in September and received the amount of \$1600 in monthly rent.

Therefore, as the landlords have not suffered a loss of rent revenue for September 2013, I dismiss their claim for that amount.

I must also note that the landlords argued that they were entitled to \$1600 as they still had to make their mortgage payment on September 1, and that they did not receive the monthly rent they were expecting from the tenants on August 27, 2013.

Out of an abundance of caution, if the landlords' true claim was due to the fact they had to make a mortgage payment, and not for loss of rent revenue, I would still make the decision to decline the landlords' claim, as their private, business financial affairs are not within the jurisdiction of the Act.

Fuel costs; time off work-

As to the landlords' request for travel expenses, I find that the landlords have chosen to incur costs that cannot be assumed by the tenants. I do not find the tenants to be responsible for the landlord choosing to rent a property in another town apart from where the landlords reside. The landlords have a choice of appointing an agent in the same town as the rental unit. The dispute resolution process allows an applicant to claim for compensation or loss as the result of a breach of Act and not for costs incurred to conduct a landlord's business, such as traveling to the rental unit or for time off work in making an application.

Therefore, I find that the landlords are not entitled to travel costs or loss of wages for making an application, as they are costs which are not named by the *Residential Tenancy Act* and I therefore dismiss the landlords' claim for \$150 for fuel costs and \$129.67 for wage loss, without leave to reapply.

As I have dismissed the landlords' monetary claim, I decline to award them recovery of the filing fee.

Conclusion

For the reasons cited above, the landlords' application is dismissed, 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: May 29, 2014

Residential Tenancy Branch

