



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Gateway Property Management Corp.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, 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 two agents for the landlord.

The landlord provided documentary evidence that each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on March 17, 2014 in accordance with Section 89. As per Section 90, the documents are deemed received by each tenant on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent and lost revenue; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 16, 38, 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on January 9, 2014 for a 1 year fixed term tenancy beginning on February 1, 2014 for a monthly rent of \$1,230.00 due on the 1st of each month with a security deposit of \$615.00 paid.

The landlord submitted a copy of a note from the tenants dated January 13, 2014 stating that the tenants were not going to move in to the rental unit.

The landlord submits that they showed the rental unit to several potential tenants but were unable to re-rent the unit until March 15, 2014.

Analysis

Section 16 of the *Act* states the rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

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.

Based on the landlord's undisputed evidence and testimony I find the tenants entered into a fixed term tenancy agreement and provided the landlord with a security deposit. As such, I find that the tenants were obliged to provide notice to end their tenancy that was compliant with Sections 45(2) or 45(3) of the *Act*.

As there was no evidence before me that the tenants were asserting that the landlord had failed to comply with a material term of the tenancy I find the tenants were required to provide notice to end the tenancy in accordance with Section 45(3). Such a notice could only end the tenancy no earlier than January 31, 2015. Therefore, I find the tenants were responsible for the payment of rent until January 31, 2015 subject only to the landlord's obligation to mitigate their losses.

I accept, based on the undisputed testimony of the landlord, that the landlord took reasonable steps to re-rent the unit and has minimized the tenants' obligations for lost revenue to 1 ½ month's worth of rent.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,895.00** comprised of \$1,845.00 rent owed and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$615.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,280.00**.

This order must be served on the tenants. If the tenants fail 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: June 05, 2014

Residential Tenancy Branch

