



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

OPB, MNDC

Introduction

This hearing was convened in response to an application by the landlord for an Order of Possession and a Monetary Order for loss of revenue. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail on 2 occasions, the tenant did not appear. The landlord provided proof of mail registration inclusive of tracking numbers for the mail, and testified that neither registered mail was accepted.

The landlord advised that the tenant has moved out of the rental unit and an Order of Possession was not required.

Issue(s) to be Decided

Is the landlord entitled to a monetary order and, if so, in what amount?

Background and Evidence

This fixed term tenancy commenced September 1, 2013 and was to end August 31, 2014. The payable monthly rent was \$4600.00 due on the first day of the month.

The tenant moved out of the rental unit on March 31, 2014. The landlord testified they contracted with a property manager to rent it but they were unsuccessful in finding a tenant for the balance of the term. The landlord did not provide any other evidence in support of what efforts were made or may have been made to mitigate losses of revenue. They claim loss of rental income for the period of April through to August 2014. The landlord provided a 1 page list containing 9 names and corresponding phone numbers of individuals that viewed the property for rent through the property manager, beginning with March 01, 2 showings in April, 1 showing in May, 4 showings in June and a final showing July 04, 2014. The landlord testified that for the months of May to the end of July 2014 they also contracted with a realtor/sales agent to sell the rental

unit, which was not successful. The landlord testified that the rental unit was available for rent and for sale at the same time, and that they would have accepted the first of both outcome, and selling the unit as a revenue property if it rented first. The landlord testified that the unit was available *for rent* at all times.

Analysis

Under the *Act*, the party claiming a loss bears the burden of proof. Moreover, the applicant must satisfy each component of the following test established by Section 7 of the *Act*, which states;

Liability for not complying with this Act or a tenancy agreement

7 (1) *If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.*

(2) *A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.*

In relevance to this matter, the test established by **Section 7** is as follows,

1. Proof the loss exists,
2. Proof the loss was the result, *solely, of the actions of the other party (the tenant)* in violation of the *Act* or agreement
3. Verification of the actual amount required to compensate for the claimed loss.
4. Proof that the claimant (landlord) followed section 7(2) of the *Act* by taking *reasonable steps to mitigate or minimize the loss*.

A tenant who signs a fixed-term tenancy agreement is responsible for the rent to the end of the term. In addition, a landlord who claims for a loss is subject to their statutory duty pursuant to Section 7(2) of the *Act* to do what *is reasonable to minimize the loss*. I accept that the landlord took the step to task a property manager to rent the unit. However, on preponderance of the limited evidence, I find that tasking someone else the statutory duty within Section 7(2) of the *Act* is, by itself in the absence of additional evidence, insufficient evidence to ascertain what efforts were made and if those efforts were *reasonable steps to mitigate or minimize the* claimed loss, as required by the *Act*. As a result, I find the landlord has not provided sufficient evidence in support of their claim, and therefore I must **dismiss** their application, without leave to reapply.

Conclusion

The landlord's application is **dismissed**, without leave to reapply.

This Decision is final and binding on the parties.

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 27, 2014

Residential Tenancy Branch

