



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Pemberton Holmes Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application.

The tenant and an agent for the landlord company attended the hearing and both gave affirmed testimony. The landlord also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to the tenant. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

During the course of the hearing the landlord applied to amend the application to show the correct name of the tenant. The tenant did not object to the amendment and the style of cause in this Decision has been amended to reflect that change.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on August 3, 2012 and was to expire on July 31, 2014, although the tenant moved out of the rental unit on March 31, 2014. Rent in the amount of \$1,500.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit from the tenant in the amount of \$750.00 as well as a pet damage deposit in the amount of \$750.00.

The landlord's agent further testified that the parties had been to a residential tenancy arbitration hearing which resulted in a Decision dated May 9, 2014. A copy of the Decision has been provided and the landlord's agent testified that a monetary order for rent for the month of April, 2014, recovery of the filing fee, liquidated damages, and an order to keep the security deposit and pet damage deposit in partial satisfaction of the claim was awarded to the landlord.

The rental unit was re-rented for June 1, 2014 for the same amount of rent that the tenant had been paying, and this application is for loss of revenue for the month of May, 2014 which was not contemplated prior to the May 9, 2014 hearing.

The landlord's agent also testified that renovations were completed in the rental unit during the tenancy and at the hearing, the tenant was awarded a monetary order for loss of use of the rental unit during that time.

The landlord's agent also testified that the landlord started to advertise the rental unit for rent on the landlord company website on March 7, 2014 as well as the local newspaper and Craigslist, a free advertising website and has provided evidence of that.

The tenant testified that she originally signed a tenancy agreement on August 3, 2012 and then was asked to sign the next one no later than June 28, 2013. Renovations were being completed from July to November, 2013, and the tenant would never have signed the contract had the landlord advised the tenant about the lengthy renovations.

The tenant further testified that the previous hearing not only dealt with the landlord's application, but also an application by the tenant for loss of use of the rental unit. The Arbitrator found that the landlord failed to comply with Sections 28 and 29 of the *Residential Tenancy Act* and failed to comply with the tenancy agreement.

The tenant further testified that the rental unit was not rentable at the time; baseboards had been removed, painting was being done, and the tenant had asked for windows and the landlord decided to take advantage of grants offered by the government for home energy saving renovations. The tenant testified that she had to move out; she didn't have access to the home and people and contractors were in and out for months. The tenant's son resided in the lower level and had extreme asthma which was aggravated by renovation dust. The renovations to the rental unit included ripping apart and refinishing the basement, installing new windows in the whole house, building a new deck, sliding glass doors being installed so concrete in the walls had to be cut, the dining room was cut out, a tankless water heater was installed, a gas fireplace was installed, a heat pump in the ceiling was installed involving cutting holes in the ceiling in each of the rooms upstairs, and a thermostat that had been installed in the carport had to be removed. Neither the contractors nor the landlord coordinated any time frames, and heaters were on the floor for weeks at a time. The tenant testified that there were a lot of issues, and the tenant did not feel she could remain in the rental unit under those conditions.

In rebuttal, the landlord's agent testified that the tenant had asked for repairs in February, 2013 to make the rental unit more heat efficient and that's when the landlord decided to look at renovations.

Analysis

I have read the Decision of the director, and it's clear that the tenant was awarded a monetary amount for loss of use of the rental unit from July to November, 2013, but that Decision was not rendered until May 9, 2014. The tenant moved out March 31, 2014, before the hearing, and the landlord was awarded a monetary amount for the tenant's failure to remain in the rental unit until the end of the fixed term. In the circumstances, I find that the tenant was awarded her monetary entitlement, but that did not serve to bar the landlord's entitlement to rent for April or liquidated damages.

The landlord had an obligation to do what was necessary to mitigate any loss by advertising the rental unit for rent at a reasonable amount as soon as was reasonable. The landlord advertised the rental unit starting on March 7, 2014, and no suitable tenant was secured until June 1, 2014. The tenant raised the question of whether or not prospective tenants would agree to move into a rental unit that was basically torn apart, but I don't accept that testimony because the renovations were completed in November prior to the tenant giving notice to vacate the rental unit. Further, that was dealt with in the May, 2014 hearing and the Arbitrator found that the tenant breached the fixed term tenancy without authority.

I find that the landlord has established a claim in the amount of \$1,500.00.

The details section of the landlord's application specifies costs for carpet cleaning, mowing and utilities, however the landlord's agent specified at the hearing that the claim is limited to unpaid rent for the month of May, 2014.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$50.00 filing fee.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,550.00.

This order is final and binding and may be enforced.

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: September 24, 2014

Residential Tenancy Branch

