



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding GODA LEASING CORP.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, the cost of skip trace and the filing fee. Both parties attended the hearing and were given full opportunity to present evidence and make submissions.

Issues to be decided

Is the landlord entitled to a monetary order to recover loss of income, the cost of skip trace and the filing fee?

Background and Evidence

The landlord purchased the rental home in September 2011 from the tenants who were the owners of the home at that time. Following the sale, the parties entered into a rent to own agreement for the period of September 2011 to October 16, 2013. In March 2013, the parties cancelled the rent to own agreement and entered into a month to month tenancy agreement.

A few months later, in June 2013, the parties entered into a fixed term tenancy agreement. The fixed term was set to end on May 31, 2014. Rent was \$2,400.00 payable on the first of each month. A security deposit was not collected by the landlord.

The tenant stated that on September 30, 2013, she provided the landlord by email with a month's notice to end the tenancy, with an effective date of November 01, 2013. The landlord denied having received any such notice and the tenant did not file a copy of the email as evidence to support her testimony.

The landlord stated that the first indication that the tenants intended to move was when the rent cheque dated November 01, 2013 bounced and her attempts to contact the tenant were unsuccessful. On November 04, the landlord visited the rental home and found that the tenants had moved out.

The landlord stated that the home was left in a condition that was un-rentable and filed photographs to support her testimony regarding the condition of the home at the end of tenancy. These photographs were sent by facsimile to the Residential Tenancy Branch Office after the hearing was completed. The photographs are black and white and detail is unclear.

The landlord stated that there was mould that had to be treated and removed and that the remedial work to restore the unit to a condition in which it could be rented was extensive and took three months to complete. The restoration work was finished at the end of January 2014.

The landlord stated that the condition of the home shortly after the tenant moved out was witnessed by realtors and the neighbours. The landlord also stated that due to the poor un-rentable condition of the home, she did not advertise for a renter.

The landlord stated that she listed the home for sale on February 01, 2014, upon completion of the restoration work. The landlord testified that a buyer was found immediately and that the sale was completed on February 20, 2014.

The tenant argued that the home was left in the same condition as it was when the landlord purchased it. The tenant pointed out that mould that the landlord referred to was present at the time of the sale which was also the start of this tenancy. The landlord did not dispute this. The tenant also referred to a hot water tank leak and the time it took the landlord's insurance company to restore the basement, leaving the tenant with partial use of the rental home during the lengthy restoration work.

The tenant stated that the area in which the rental unit is located is very desirable for families with young children, because of the schools and parks nearby. The tenant also added that the demand for rental units in this area exceeds the supply and if the landlord had advertised the availability of the unit, she would have found a renter immediately.

The landlord stated that the condition of the home was so poor that she did not attempt to find a renter until the restoration work was done. The landlord added that with the approaching holiday season, the restoration work took longer than anticipated.

The landlord is claiming the following:

1.	Loss of income (November 01, 2013 to February 20, 2014)	\$8,914.29
2.	Skip trace	\$204.75
3.	Filing fee	\$100.00
	Total	\$9,219.04

Analysis

1. Loss of income for November 01, 2013 to February 20, 2014 -\$8,914.29

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord 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.

Based on the sworn testimony of both parties, I find that the tenant has not proven that she provided the landlord with adequate notice to end tenancy. The tenant moved out on or about November 01, 2013, which is prior to the end date of the fixed term. By ending the tenancy prior to the end date of the fixed term, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit. However, the landlord testified that she did not make efforts to re rent the unit because of the condition it was left in. The landlord added that shortly after the tenants moved out, the unit was inspected by realtors and work was carried out to restore the unit to a good condition. Upon completion of the work; the unit was listed and sold.

Since the landlord had realtors walk through the unit in the first week of November and eventually listed and sold the rental unit, I find on a balance of probabilities that it is more likely than not that the rental unit was unavailable for rent after the tenants moved out.

As explained to the parties during the hearing, the onus or burden of proof is on the party making a claim to prove the claim. When one party provides evidence of the facts in one way and the other party provides an equally probable explanation of the facts, without other evidence to support the claim, the party making the claim has not met the burden of proof, on a balance of probabilities, and the claim fails.

The tenant argued that the damage that the landlord is claiming was caused by the tenant was damage that was present at the time the landlord purchased the home. Upon review of the photographs presented by both parties and in the absence of a move in inspection report, I find that I am unable to determine what damage existed at the time the landlord purchased the rental home and what damage was caused by the tenants, in excess of wear and tear. Therefore I find that the landlord has not proven that the tenant caused extensive damage that required repairs that took three months to complete.

Pursuant to *Residential Tenancy Policy Guideline #3*, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner. In this case, even if I find that the tenants caused extensive damage, the landlord has not proven that she took steps to complete the repairs in a timely manner. The repairs and restoration took three months to complete.

Also pursuant to *Residential Tenancy Policy Guideline #3*, placing the property on the market for sale will not constitute mitigation. Even though the landlord stated that she listed the property for sale on February 01, 2014, I find that on a balance of probabilities that it is more likely than not that the landlord had intentions of listing the rental unit for sale right from the first week of November, when she had realtors walk through the property.

I further find that by her own admission, the landlord did not advertise the availability of the rental unit for the purpose of renting. The landlord had the opportunity to advertise for a new tenant while the work was ongoing, but chose not to do so. Therefore I find on a balance of probabilities that it is more likely than not that the landlord intended to sell the rental unit when it became vacant and had no intentions of re-renting the unit.

Accordingly I find that the landlord did not suffer a loss of income because she did not intend to rent the unit. Therefore the landlord is not entitled to loss of income for the period of November 01, 2013 to February 20, 2014.

2. Skip Trace - \$204.75

The legislation does not permit me to award any litigation related costs other than the filing fee.

3. Filing fee - \$100.00

The landlord has not proven her case and therefore must bear the cost of filing her own application.

Conclusion

The landlord's application is dismissed in its entirety.

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 05, 2014

Residential Tenancy Branch

