



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR

Introduction

This hearing was convened to address a claim by the landlord for a monetary order. Both parties participated in the conference call hearing.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on or about March 1, 2013 and ended at the end of August 2013. They further agreed that the parties had signed a tenancy agreement which set a fixed term, ending the tenancy on February 28, 2015.

The landlord testified that early in the tenancy, the tenants advised that they planned to vacate the rental unit prior to the end of the fixed term. She stated that she told the tenants that she would try to re-rent the unit but would hold them responsible for the rent if she was unable to secure new tenants. The landlord testified that until the tenants vacated the unit, she advertised the unit and showed it to several prospective tenants, but was unable to secure new tenants prior to the end of the fixed term. She stated that she posted the advertisement on Craigslist repeatedly and provided a list of the dates on which those advertisements were placed. She stated that she also placed advertisements weekly on community bulletin boards in local grocery stores, a gas station and 2 libraries. She said that she also placed a sign in the window of the home and told friends, family and church members that the unit was for rent. The landlord seeks to recover \$1,200.00 in unpaid rent for each of the months of September 2013 – February 2014 inclusive.

The tenants testified that the landlord displayed erratic behaviour throughout the tenancy, confronted them and their guests, gave their personal information to a private

security company and was indecisive on the issue of whether she was selling the property. They claimed that she verbally agreed to end the tenancy early, but refused to sign an agreement to end the tenancy and told them they would be held responsible for any loss of income. They stated that in a conversation on May 27, they told the landlord about their concerns with her behaviour and said they would like to end the tenancy early. They claimed that one of the tenants was away for the summer and the other was concerned about her safety, so she stayed with friends during the summer. They claimed that the landlord did not make reasonable efforts to re-rent the unit and questioned whether the list of advertisements entered into evidence by the landlord represented advertisements for the rental unit as no address was listed.

The landlord denied having behaved in the way described by the tenants and also denied having verbally agreed that the tenants could end the tenancy prior to the end of the fixed term.

Analysis

The *Residential Tenancy Act* (the “Act”) establishes the following test which must be met in order for a party to succeed in a monetary claim.

1. Proof that the respondent failed to comply with the Act, Regulations or tenancy agreement;
2. Proof that the applicant suffered a compensable loss as a result of the respondent’s action or inaction;
3. Proof of the value of that loss; and
4. Proof that the applicant took reasonable steps to minimize the loss.

Section 45(2) of the *Residential Tenancy Act* (the “Act”) provides that tenants cannot end a fixed term tenancy prior to the end of the fixed term and section 53 of the Act provides that when a party purports to end a tenancy prior to the earliest date on which the tenancy can be legally ended, the notice to end the tenancy is automatically corrected to reflect the correct date. I find that section 53 operated to correct the effective date of the tenants’ notice to February 28, 2014.

The tenants claimed that they had the right to end the tenancy early because the landlord had breached a material term of the tenancy. Section 45(3) provides that tenants may end a tenancy early in this case, but requires the tenants to inform the landlord in writing that a material term of the tenancy has been breached and give the landlord a reasonable time to correct the breach. The tenants did not follow the requirements of the Act and notify the landlord in writing that they considered her

actions to constitute a breach of a material term and I therefore find that the tenants did not have the right to end the tenancy early.

I find that the tenants breached their obligation under the Tenancy Agreement to pay rent throughout the fixed term of the tenancy agreement.

The tenants did not claim that the landlord received rental income for the rental unit and I therefore accept the landlord's assertion that the unit remained empty throughout the balance of the fixed term and that she suffered a loss of \$7,200.00 of rental income.

The tenants claimed that the landlord did not act reasonably to mitigate her losses, but did not provide a basis on which I should question the landlord's credibility. While the list of Craigslist advertisements does not list an address for the rental unit, I find that this does not mean that the advertisements were for another unit or were not legitimate advertisements. I find the landlord to be credible and I find that the Craigslist advertisements together with the weekly posting of advertisements on community bulletin boards as well as word-of-mouth advertising represent reasonable attempts to re-rent the unit.

I find that the landlord has met each of the 4 steps outlined in the test above and I find that she is entitled to recover the lost income. I award the landlord \$7,200.00 and grant her a monetary order under section 67 for that amount. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is awarded \$7,200.00.

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 16, 2015

Residential Tenancy Branch

