



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This is an application brought by the Landlord(s) requesting a monetary order in the amount of \$1100.00 and recovery of the \$50.00 filing fee.

Some documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The issue is whether or not the applicant has established monetary claim against the respondent, and if so in what amount.

Background and Evidence

This tenancy began on February 1, 2013 for a fixed term, with an expiry date of January 31, 2014.

The tenant passed away in December of 2013 and the tenant's family inform the landlord on January 3, 2014, in a voicemail, that they had removed the tenant's belongings.

The landlords spoke with the tenant's family on January 6, 2014 and confirmed that the tenant's belongings had been totally removed from the rental unit.

The landlords testified that they prepare the rental unit for re-renting and started advertising the unit for rent approximately mid-January 2014; however the landlords further stated that they were unable to find a renter for the month of February 2014.

The applicants are therefore requesting an order that the respondent bear the cost of the lost rental revenue for the month of February 2014 in the amount of \$1100.00.

Applicants are also requesting recovery of their \$50.00 filing fee.

The respondent testified that the tenant had fully intended to give a Notice to End Tenancy before the end of December 2013 however the tenant passed away and therefore was unable to do so.

The tenant's family dealt with the tenant's property and contacted the landlord's as soon as they were able to find the contact information in the tenant's belongings. They were unable to contact the landlord before the end of December 2013 however they left a voicemail for the landlord on January 3, 2014 and confirmed later with the landlord that the tenant's belongings had been fully removed from the rental unit on January 1, 2014.

The respondent does not believe that the estate should be held liable for lost rental revenue for February 2014 as they were unable to give proper notice due to the death of the tenant.

Analysis

Section 7 of the Residential Tenancy Act states:

- 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.

Therefore, in this case, since the landlord was not given the proper one clear month Notice to End Tenancy, the estate would be liable for the landlord's losses however as stated above the landlord must do whatever is reasonable to minimize the damage or loss, which in this case would require that the landlord attempted to re-rent the unit.

The landlord claims that they advertised the unit in an attempt to re-rent it, however the landlord has provided no evidence in support of the claim that the unit was advertised.

In the absence of any evidence that the landlords advertised this unit for rent, it is my finding that the landlords have not met the burden of proving that they met their obligations under section 7(2) of the Residential Tenancy Act.

Therefore I'm not convinced that the landlords took reasonable steps to minimize their loss, and I will not hold the respondents liable for lost rental revenue for the month of February 2014.

The landlord's application for a monetary order and recovery of the filing fee is denied.

Conclusion

This application is dismissed without leave to reapply.

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 15, 2015

Residential Tenancy Branch

