



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on April 1, 2015 for a fixed term to end March 31, 2016. The tenancy ended on April 27, 2015. Rent of \$1,600.00 was payable monthly on the first day of each month. At the outset of the tenancy the Landlord collected \$800.00 as a security deposit. April 2015 rent was paid with the \$800.00 security deposit plus \$800.00 cash.

The Landlord states that on April 3, 2015 the Tenant informed the Landlord that mold was found behind the dishwasher and that the Tenant would no longer live in the unit. The Landlord states that the Tenant did not say at this time when the last day of the tenancy would occur. The Landlord states that the Tenant told the Landlord not to bring

in a person for the mold as this could be done after the move-out. The Landlord states that on April 17, 2015 the Tenant gave the Landlord written notice to end the tenancy on April 27, 2015. The Landlord states that the unit was advertised immediately online and that a new tenant was found for May 15, 2015. The Landlord states that the unit was advertised for \$1,700.00 per month and that the new tenant agreed to pay this rental amount. The Landlord claims lost rental income for half of May 2015 in the amount of \$800.00.

The Tenant states that the Landlord was told on April 3, 2015 that the Tenant would no longer live in the unit and that the Tenant then stayed with his daughter until a new place could be found. The Tenant states that at move-in the dishwasher in the unit was very old and when it was moved away from the wall extensive mold was discovered. The Tenant states that a contractor advised the Tenant that the mold was dangerous. The Tenant provided photos of the unit. The Tenant states that they should not have to pay for rent for May as the unit was not liveable.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that an actual loss occurred or can be established. While the Tenant ended the fixed term tenancy early and whether without appropriate notice or due to the unit being uninhabitable, as the Landlord advertised and accepted a new tenancy at an increased rent of \$100.00 a month starting May 15, 2015, I find that the Landlord acted to create a benefit from the ending of the tenancy. This benefit amounts to more than \$800.00 in additional rent over the term of the tenancy that the Tenant ended. As a result I find that the Landlord has not established a loss of \$800.00 and I dismiss the Landlord's application.

Conclusion

The application is dismissed.

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 07, 2015

Residential Tenancy Branch

