



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding 0818368 B.C. Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting them to retain the security deposit. Both parties participated in the conference call hearing with the landlord being represented by their agent EB and the tenants both represented by the tenant SM.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?
Should the landlord be permitted to retain the security deposit?

Background and Evidence

The relevant facts are not in dispute. The tenancy began on July 1, 2014 at which time the tenants paid a \$700.00 security deposit. Rent was set at \$1,400.00 per month and the tenancy was set to run for a fixed term ending on June 30, 2015. On March 31, the tenants provided to the landlord their written notice that they would be vacating the rental unit on April 30, 2015. On May 5, 2015, the landlords retained a professional property management company to re-rent the unit. That company advised the landlords that the rental unit could attract rents between \$2,200.00 - \$2,400.00 per month. EB testified that she believed that the management company advertised the unit on their website and may have had other advertisements as well. The company was able to secure other tenants for the month of July at a rate of \$2,000.00 per month, which was agreed to because the tenants were willing to sign a 2 year fixed term tenancy agreement.

The landlord seeks to recover lost income for the months of May and June as well as the \$50.00 filing fee paid to bring their application.

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.

I find that the parties were in a fixed term tenancy agreement and that the tenants were obligated to continue their rental payments until June 30, 2015. I find that the tenants ended the tenancy early and therefore were in breach of that agreement and that the landlord suffered a loss of \$2,800.00 in income as a direct result of that breach. I find that the landlord has established the first 3 elements of the test outlined above.

However, I find that the landlord has not proven that they acted reasonably to minimize their losses. The landlord received notice on March 31 that the tenants were ending the tenancy early, but took no steps to advertise the unit throughout the month of April. Instead of seeking to recover their actual losses, the landlord chose to pursue higher rents. While it seems to have been true that the rental unit would attract a higher rental rate, it is very possible that the landlord could have re-rented the unit for part of May and for April had they advertised the unit at the rate the tenants were paying. I find that the landlords failed to act reasonably and therefore find that they failed to meet the fourth element of the test. I therefore dismiss the landlord's claim.

The landlord has retained the \$700.00 security deposit in anticipation of success in their claim. I order the landlord to return that deposit to the tenants forthwith and I grant the tenants a monetary order under section 67 for \$700.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The claim is dismissed and the landlord is ordered to return the deposit to the tenants. The tenants are granted a monetary order for \$700.00.

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: October 14, 2015

Residential Tenancy Branch

