



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing convened as a result of the Landlords' Application for Dispute Resolution wherein the Landlord requested a Monetary Order for unpaid rent and utilities and to recover the filing fee.

This hearing occurred over two days: July 27, 2015 and October 8, 2015. At the July 27, 2015 hearing the Landlord D.R. appeared on his own behalf and as agent for the other Landlord A.R. At the October 8, 2015 hearing both Landlords attended. The Tenant appeared at both hearings.

During the hearings, the hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me.

The July 27, 2015 hearing was adjourned as the Landlord had not received the Tenant's response materials. At the October 8, 2015 hearing, the parties agreed that all evidence that each party provided had been exchanged. No other issues with respect to service or delivery of documents or evidence were raised.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

1. Are the Landlords entitled to monetary compensation for unpaid rent and utilities?

2. Should the Landlords recover the fee paid to file their application?

Background and Evidence

LANDLORDS' EVIDENCE

Introduced in evidence was a copy of the residential tenancy agreement titled "Basic Rental Agreement or Residential Lease" signed by both the parties on June 7, 2014 (the "Agreement"). The Agreement does not indicate when the tenancy began. Monthly rent was payable in the amount of \$2,000.00 in advance of the 15th of the month according to the Agreement.

The Landlords submitted that the tenancy was for a fixed one year term as the phrase "For a period of one year" was handwritten into the first page of the Agreement. No start date or end date was noted in the Agreement.

The Landlord testified that the Tenants delivered a written Notice to End Tenancy on November 15, 2014 with an effective date of December 15, 2014. The parties agreed that the tenancy ended on December 15, 2014 as provided for in the Notice. The parties also agreed that the Tenants paid the Landlords rent until January 15, 2015.

At the outset of the July 27, 2015 hearing the Landlords confirmed they sought the sum of \$3,049.00 rather than the \$10,000.00 claimed on their application. Introduced in evidence was a document submitted by the Landlords titled "Rebuttal to Evidence submitted by [Tenant]" in which the Landlords wrote they sought compensation for the following:

- \$2,733.26 in unpaid rent for the month and a half (January 15, 2015 to February 26, 2015) the rental unit was vacant;
- \$216.00 for electricity for the rental unit from December 16, 2014 to February 26, 2015; and
- \$100.00 for the filing fee.

The Landlord testified that the rental unit was advertised on a local internet site as well as in the local newspaper. The Landlords failed to submit any evidence of such marketing. When asked for more details regarding their marketing efforts, the Landlord, D.R., responded that he could not provide a date as to when the unit was advertised or

any supporting documentary evidence as he did not believe he was going to be required to provide evidence of his attempts to re-rent the rental unit.

TENANT'S EVIDENCE

The Tenant testified that he gave the Landlord verbal notice to end the tenancy on November 3, 2014. He confirmed that he provided written notice on November 15, 2014. A copy of this written notice was introduced in evidence.

The Tenant submitted that the Landlords did not mitigate their loss, and stated that despite being provided notice as early as November 15, 2014, the Landlords failed to put a for rent sign on the property, or otherwise mitigate their loss by actively market the rental unit at the time.

The Tenant introduced in evidence copies of the classifieds from the local newspaper from January 9, 2015 (the date the Tenant alleges he was made aware the Landlord was seeking compensation for unpaid rent) which suggested the Landlord did not advertise in the local newspaper. The Tenant also introduced evidence of the Landlords' post on social media dated December 28, 2014 and January 9, 2015 and alleges this was nearly two months after he gave verbal notice on November 3, 2014 and in any case weeks after he gave written notice.

In response to the Landlord's claim for \$216.00 for electricity, the Tenant alleged that the Landlord used the rental unit as an area for the Landlord's band practice during the time the property was vacant and as such the Tenant submits the Landlord should be responsible for this cost.

LANDLORDS' REPLY

In reply D.R. stated that they believed they could not legally rent the unit until December 15, 2014, the effective date of the written notice. He further submitted that on November 3, 2014 they took photos of the rental unit for the purposes of advertising.

The Landlords further testified that numerous people contacted them regarding their social medial post, but most wanted the Landlords to reduce the rental amount. When asked what amounts these prospective tenants proposed, D.R. stated that he could not remember.

In response to the Tenant's claim that D.R. used the property for band practice, the Landlord stated that he used the property twice and in any case he did not use any electricity.

Analysis

In a claim for damage or loss under the *Act* or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, the Landlords bear the burden of proving their claim.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the *Act* or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the *Act* by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

Section 67 of the *Act* provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows.

Residential Tenancy Policy Guideline 30: Fixed Term Tenancies provides as follows:

A fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined expiry date. At least one Court has interpreted “predetermined

expiry date” to include a provision in the tenancy agreement that the tenancy will terminate as a result of a specified occurrence or circumstance.

I find that the Agreement does not include a specified start date, nor does it include a predetermined expiry date and as such I find the Agreement does not meet the definition of a fixed term tenancy.

The parties agreed that rent was payable on or before the 15th of the month. I find that the effective date of the Tenant’s written notice to end the tenancy was December 15,, 2014. As the Tenant paid rent until January 15, 2015, I find the Landlords have suffered no loss of rent.

Even in the event I had found a fixed term tenancy existed, I would dismiss the Landlords’ claim for compensation for lost rent and utilities for the following reasons.

Pursuant to section 7(2) of the *Act*, the party who claims compensation for loss that results from the non-complying party must do whatever is reasonable to minimize the loss.

The duty to minimize the loss begins when the party entitled to claim damages becomes aware that damages are occurring. Failure to take the appropriate steps to minimize the loss will have an effect on a monetary claim, where the party who claims compensation can substantiate such a claim.

I find that the Landlords were aware the tenancy was ending as of November 15, 2014, the date of the written notice. I further find that they failed to take adequate steps to market the rental unit or minimize their loss by accepting a reduced rent from prospective tenants.

The Landlords failed to introduce any evidence of their marketing efforts. I accept the evidence of the Tenant that the Landlords failed to advertise in the local newspaper. I further accept the evidence of the Tenant that the Landlord did not advertise the rental unit until December 28, 2014, and did so on a social media site. While I accept December is a more difficult time to find tenants, had the Landlords advertised as soon as they received the written notice, they may have rented the rental unit sooner.

Additionally, D.R. conceded that numerous people contacted him about the rental unit and offered to rent it at a reduced rate. Had he accepted their offers he would have minimized his loss. As well, had he suffered a loss in the form of reduced rent, he could have pursued compensation from the Tenant for the difference.

Further, as the Tenant vacated the rental unit on December 15, 2014, he ceased using utilities as of that date. I am persuaded by the Tenant's submissions that the Landlord, D.R., used the rental unit as a place for his band practice. I find that if any utilities were used during the period of time the rental unit was vacant, payment for those utilities would be the responsibility of the Landlords.

The Landlords, having been unsuccessful in their claims are not entitled to recover the filing fee.

Conclusion

The Landlords' claim is dismissed in its entirety. The tenancy agreement does not meet the definition of a fixed term tenancy. The effective date of the Tenant's notice was December 15, 2014, and as he paid rent until January 15, 2015, the Landlords suffered no loss. As the tenancy ended on December 15, 2014, the Landlords are not entitled to compensation for utilities following that date. The Landlords' claim for recover of the filing fee 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: November 06, 2015

Residential Tenancy Branch

