



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINCERE REAL ESTATE SERVICES LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The parties acknowledged receipt of evidence submitted by the other and gave affirmed testimony.

Issues to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The landlord gave the following testimony:

The tenancy began on or about May 4, 2015 that was to be for a fixed term of one year. Rent in the amount of \$3800.00 is payable in advance on the first day of each month. At the outset of the tenancy the landlord collected from the tenant a security deposit in the amount of \$1900.00 and a pet deposit of \$1000.00. The landlord stated that on January 28, 2016 the tenants gave notice to move out by February 29, 2016. The landlord stated that he aggressively advertised the unit on Craigslist daily and on the company website.

The landlord stated that they were offering very flexible terms for move in; sublet, new contract or month to month, in attempts to mitigate and rent quickly. The landlord stated

that the tenants provided one interested party for the unit but when he attempted to contact the person, the person did not respond or reply at any time. The landlord stated that they were able to rent the unit for April 15, 2016 and seek loss of revenue for the one and a half months of \$5700.00.

The tenants gave the following testimony. The tenants stated that they tried to find a suitable renter for the landlord and gave one interested party's contact information. The tenants stated that they felt that they had done their due diligence and that it was up to the landlord to do the rest. The tenants stated that they thought they had done all they could to get out of the tenancy without having to pay.

Analysis

While I have turned my mind to all the documentary evidence and the testimony of the parties, not all details of the respective submissions and arguments are reproduced here. The principal aspects of the landlord's claim and my findings around each are set out below.

Section 67 of the Act states that when a party makes a claim for damage or loss the burden of proof lies with the applicant to establish their claim. **To prove a loss the applicant must satisfy all four of the following four elements:**

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Based on the documentation of the landlord and the testimony of both parties; the landlord has provided sufficient evidence to satisfy each of the four grounds outlined above. The tenants do not dispute that they were in a fix term tenancy and that they

chose to end it prematurely. The landlord has provided proof of the amount of loss and the steps he took to mitigate that loss.

Based on all of the above and on a balance of probabilities I find that the landlord is entitled to \$5700.00.

As for the monetary order, I find that the landlord has established a claim for \$5700.00 in lost revenue. The landlord is also entitled to recovery of the \$100.00 filing fee. I order that the landlord retain the \$1900.00 security deposit and the \$1000.00 pet deposit in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2900.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$2900.00.

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: July 13, 2016

Residential Tenancy Branch