



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DERAMORE CONSTRUCTION SERVICES INC.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF, MNSD

Introduction

This hearing dealt with an application by the landlord for a monetary order, an order to retain a portion of the security deposit in partial satisfaction of the claim and an order to recover the filing fee. 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.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlord's testimony is as follows. The tenancy began on July 1, 2015 and ended on February 29, 2016. The parties had signed a one year fixed term that was supposed to end on June 30, 2016. The tenants were obligated to pay \$4200.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$2100.00 security deposit. The landlords stated that the tenants broke the lease early by giving them written notice on January 29, 2016 for a move out date of February 29, 2016. The landlords stated that condition inspection reports were conducted at move in and move out with the tenant present. The landlords stated that the tenant "signed off" the liquidated damages of \$1000.00 and that the landlord retained that amount from the deposit and returned the remaining \$1100.00 to the tenants and that the landlords still have possession of the remaining \$1100.00 of the security deposit.

The landlords stated that due to the home being a five bedroom 4200 square foot home, it was difficult to re-rent the unit. The landlord stated that the "season" for this type of product is July, August, and September. The landlords stated that despite advertising on several websites they only showed the property 8 times in the first three months. The landlords stated that they reduced the asking price from \$4200.00 down to \$3600.00 in March. The landlords stated that they incurred advertisement costs of \$75.20 and lawn care of \$175.00. The landlords stated that they seek loss of revenue for four months of \$4200.00 x 4 months = \$16,800.00 plus their filing fee of \$100.00 for a total amount of \$17, 150.00.

The tenants' agent gave the following testimony. The agent stated that the landlord did not dispute the tenants ending the tenancy early. The agent stated that they were led to believe that the liquidated damages would cover any loss or inconvenience to the landlord and thus agreed to that amount. The agent stated that they had attempted to assist the landlord by trying to offer to find a sublet but were denied. The tenants stated that since the landlord didn't live locally they asked to get a copy of the keys to the house so they could do showings but had trouble getting a hold of the landlord. The agent stated that they offered to pay the landlord 50% of their claim but the landlords declined.

The agent stated that since the landlords declined their offer and decided to go through the hearing process, they feel the liquidated damages are sufficient compensation for the landlord.

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.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises after receiving written notice of the tenant's intention to vacate the rental unit. The landlord posted an online rental advertisement on several websites. However, I find that the landlord has not attempted to fully minimize its losses. The landlord did not reduce the rental price until March 2016 for the rental unit or offered a shorter fixed term lease or a month-to-month tenancy, as incentives to try to attract potential tenants. In addition, the tenants wished to assist the landlord by requesting to find a sublet but were refused. As such, I find that the landlord has failed to fully mitigate its losses under section 7(2) of the *Act*.

The landlord is claiming for 4 months of rental loss from March 1, 2016 until June 30, 2016, the period during which the property could not be re-rented. The liquidated damages clause of the tenancy agreement states that the landlord is not precluded from claiming a loss of rental income if liquidated damages are paid by the tenant. I find that the tenant breached the fixed term tenancy agreement, vacated with proper notice to the landlord and that she is responsible for the liquidated damages of \$1000.00 which covers the landlords \$75.20 cost to advertise, \$175.00 to maintain the lawn, the time required to conduct showings and review the suitability of potential renters.

Accordingly, I also find that the landlord is entitled to a full month's rent for the period from March 1, 2016 to March 31, 2016 in the amount of \$4200.00. I make these findings on the basis that two months (January 29, 2016 – March 31, 2016) is a reasonable period of time to advertise, show and re-rent the rental unit. I have also taken into account the potential of re-renting during the winter months when the rental market may be slower and have accounted for the fact that the unit is a large home with a higher than average asking price. I find that the

landlord is entitled to only one month's rent for March 2016 because it failed to fully mitigate its losses, as noted above.

I dismiss the landlord's claim to recover rent of \$4200.00 for each month for the period from April 1, 2016 until June 30, 2016. I find that the landlord should have been able to re-rent the unit within a reasonable two-month from the time the tenant gave notice on January 29, 2016-March 31, 2016 as noted above. I find that had the landlord attempted to decrease the rent sooner or the fixed term period, that potential tenants would have been more likely to rent the unit at an earlier time.

The landlord is entitled to retain the \$1000.00 from the security deposit that they presently hold in trust to satisfy the claim for the liquidated damages.

The landlord is also entitled to the recovery of the \$100.00 filing fee.

Conclusion

As for the monetary order, I find that the landlord has established a claim for \$4300.00. The landlord is entitled to retain the remaining \$1100.00 of the security deposit in partial satisfaction of the claim. I grant the landlord an order under section 67 for the balance due of ~~\$4300.00~~ \$3200.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

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 06, 2016

DECISION/ORDER AMENDED PURSUANT TO
SECTION 78(1)(A)
OF THE RESIDENTIAL TENANCY ACT ON
(August 2, 2016)
AT THE PLACES INDICATED.

Residential Tenancy Branch

