



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNR

Introduction

This hearing dealt with an application by the landlord seeking a monetary order for loss of revenue. Both parties participated in the conference call hearing. The tenants confirmed that they received the landlords' Notice of Hearing letter, Application for Dispute Resolution and evidence. The tenant did not submit any documentation for this hearing. I am satisfied that the parties have exchanged said documents in accordance with the service provisions of the Act and the Rules of Procedure.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background, Evidence

The landlords' testimony is as follows. The tenancy was to begin on November 1, 2015 and was to end on September 30, 2018. The tenants were obligated to pay \$5900.00 per month in rent in advance and at the outset of the tenancy the tenants paid a \$2950.00 security deposit. The landlord stated that the tenant put a stop payment on the security deposit and does not hold any money in trust at this time. The landlord stated that the tenant was given the keys to the property and was allowed to view it for over half a day. The landlord stated that at the time the parties signed the tenancy agreement, the only comments that came from the tenants was that they were excited to move in.

The landlord stated that the issues the tenant has stated were minor repairs and that all of the work was done by a professional contractor and that the unit was ready for move in ahead of schedule on October 22, 2015. The landlord stated that when he was advised the tenant no longer wanted it, he immediately advertised the unit and shortened the fix term to one year to entice potential renters. The landlord stated that he renewed his ads daily and was able to rent the unit for December 8, 2015. The landlord stated that he seeks the loss of revenue for November and the seven days of December that the unit was empty.

The tenant gave the following testimony. The tenant stated that when he initially looked at the unit it was dark and rainy and that he didn't have a good look at it. The tenant stated that when he returned for a second look after signing the tenancy agreement, he noticed many

deficiencies with the property such as a broken barbeque, damage to the front door, multiple scratches to the windows, flooring that needed to be redone, moths all over the house, and mold and mildew. The tenant stated that he does not like to complain about things and came to the conclusion it was better for both parties if he did not move in.

Analysis

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

Loss of Revenue

I find that the landlord and tenant entered into a fixed term tenancy for the period from November 1, 2015 to September 30, 2018.

Subsection 45(2) of the *Act* sets out how a tenant may end a fixed term tenancy:

A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,*
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and*
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.*

The above provision states that the tenant cannot give notice to end the tenancy before the end of the fixed term. If the tenant does, he could be liable for a loss of rent during the period when the unit cannot be re-rented. In this case, the tenant was given the keys on September 24, 2015 as a courtesy and consideration to allow him to move some things early as the house was empty. The tenant advised the landlord on the following day that he had changed his mind and no longer wanted to rent the house as he felt the condition of the home was not of his desired standards. Although the tenant stated that there were deficiencies with the property he did not give the landlord an opportunity to address or even discuss the matter.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the *Regulation* or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. However, section 7(2) of the *Act* places a responsibility on a landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable, to re-rent the premises soon after receiving written notice of the tenant's intention to

vacate the rental unit. The landlord posted an online rental advertisement immediately along with posting it on the company website.

The landlord made efforts to re-post and renew the advertisements daily to preserve priority on the website. I accept the landlord's evidence that this was a slow rental period, particularly during the winter months, and that the landlord had a very limited amount of showings. Although the landlord did not reduce the rental price, he did reduce the fixed term down to one year to make it more attractive to potential renters. The landlord explained the positive features of this unit to justify the price as well as the security of the fixed term lease. As such, I am satisfied that the landlord discharged its duty under section 7(2) of the *Act* to minimize its losses.

The landlord seeks the rental loss for November 2015 - \$5900.00 and a pro-rated amount for seven days in December of ($\$5900.00 \div 31 \text{ days} = \$190.32 \times 7 \text{ days loss of revenue} = \1332.26). The landlord seeks a monetary order of \$7232.26. Based on all of the above, the landlord has provided sufficient evidence to be successful in this application. The landlord is entitled to a monetary order of \$7232.26.

Conclusion

The landlord has established a claim for \$7232.26. I grant the landlord an order under section 67 for the balance due of \$7232.26. This order may be filed in the Small Claims 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: August 24, 2016

Residential Tenancy Branch

