



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for compensation for loss pursuant to section 67;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions.

Issues

Is the landlord entitled to a monetary award for compensation for loss?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background and Evidence

The tenancy began in March 2013. The lease was renewed for a 1 year fixed term starting on June 1, 2014 and was again renewed on a month to month basis starting on June 1, 2015. The monthly rent as per the lease is \$1800.00 payable on the 1st day of each month. The tenancy agreement contains a clause stipulating a rent increase for each additional occupant not named in the agreement. In the one year fixed term lease starting on June 1, 2014, the amount of the rent increase is written as "TBD" (to be determined), if applicable. In the lease starting on June 1, 2015 the rent increase is listed at \$350.00.

At the end of August 2014 the tenant's cousin moved into the rental unit on a full-time basis. Between December 2014 and June 2015, the parties exchanged e-mails in an attempt to come to an agreement on the amount of the rent increase for the additional occupant. The landlord was asking for some retro pay and an agreement going forward to pay an additional \$350.00 per month. The parties could not come to an agreement. The tenant agreed to pay \$350.00 per month starting June 1, 2015 and the lease renewal reflects this agreement. As the parties could not agree on an amount of retro pay, the tenant's cousin vacated the rental unit on June 4, 2015.

The landlord is claiming lost rental income at \$350.00 per month for the 10 month period of August 2014 to May 2015. The landlord withdrew the claim for unpaid utilities as they have since been paid in full.

The tenant disputes the landlord's claim stating they could not come to an agreement on the amount of the rent increase as an amount was not set in the lease agreement. An amount was agreed upon in the lease renewed June 1, 2015 but the extra occupant vacated at that time.

Analysis

Pursuant to section 67 of the *Act*, when a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim on a balance of probabilities. To prove a loss, the applicant must satisfy 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.

I find that the landlord has not established the existence of the loss claimed. The lease in effect for the period of June 1, 2014 to May 31, 2015 does not stipulate an amount of rent increase for additional occupants. Rather the agreement stipulates that this amount is "to be determined". There is no evidence that the parties ever reached an agreement on this amount until the lease renewal starting June 1, 2015. The landlord claim for lost rental income of \$350.00 per month for the 10 month period of August 2014 to May 2015 is dismissed as the tenancy agreement in place for this period did not allow for this increase nor is there any evidence of this amount being agreed to by the parties.

As the landlord was not successful in this application, I find that the landlord is not entitled to recover the \$100.00 filing fee paid for this application.

Conclusion

The landlord's application 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: October 24, 2016

Residential Tenancy Branch