Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes   FF, MNDC, MNR, MNSD

Introduction

This is an application brought by the Landlord requesting a monetary order in the amount of $2822.00

A substantial amount of documentary evidence, photo evidence, digital evidence, and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all relevant submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All parties were affirmed.

Issue(s) to be Decided

The landlord had originally filed a claim for $2822.00, however at the beginning of the conference call the landlord stated he is now only claiming lost rental revenue of $1800.00, and recovery of his $100.00 filing fee.

The issue therefore is whether the landlord has established a claim for lost rental revenue and recovery of the filing fee.

Background and Evidence

The parties agree that this tenancy began on April 30, 2015, for a fixed term expiring January 31, 2016, and with a monthly rent of $900.00, due on the first of each month.

The parties also agree that the tenants vacated the rental unit on December 1, 2015.

The landlord testified that, even though the tenants were in a fixed term tenancy agreement with an end of tenancy date of January 31, 2016, the tenants vacated the

rental unit on December 1, 2015, and, although he attempted to re-rent the unit, he was unable to do so, and therefore lost two months rental revenue for total of $1800.00.

The landlord is therefore requesting a monetary order for his lost rental revenue of $1800.00 and recovery of his $100.00 filing fee, for total of $1900.00.

The tenants testified that the landlord breached material terms of the tenancy agreement by removing the thermostat from the rental unit, and by entering their rental unit without providing the proper 24 hours' notice before entering, and therefore on October 31, 2015 they gave the landlord written notice that they would be vacating the rental unit on December 1, 2015.

The tenants further testified that they did not give the landlord a written request to rectify the breach before giving the Notice to End Tenancy.

Analysis

Section 45(3) of the Residential Tenancy Act states:

> **45**(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period **after the tenant gives written notice of the failure**, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. **(My emphasis)**

In this case the tenants have admitted that they did not give the landlord any written notice of his failure to comply a material term of the tenancy agreement, and therefore they did not have the right to end the tenancy prior to the end of the fixed term.

Therefore, even though the tenants claim that the landlord breached a material term of the tenancy agreement, the tenants notice to end the tenancy did not comply with section 45 of the Residential Tenancy Act, and the tenants are therefore liable for any lost rental revenue that resulted from their ending the tenancy prior to the end of the fixed term.

In this case the landlord lost the rental revenue of $900.00 per month for the month of December 2015, and for January 2016, for a total of $1800.00, and I therefore allow the landlords claim for that lost rental revenue.

I also allow the landlords request for recovery of his $100.00 filing fee.

Conclusion

I have allowed the landlord's full reduced claim and, pursuant to sections 67 and 72 of the Residential Tenancy Act, I have issued an order for the respondents to pay $1900.00 to the applicant.

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: March 14, 2017

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Residential Tenancy Branch