



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started on December 15, 2013 for a fixed term to end on June 15, 2015. The Tenants moved out of the unit on September 30, 2014. Rent of \$3,000.00 was payable on the 15th day of each month. At the outset of the tenancy the Landlord collected \$1,500.00 as a security deposit and \$1,500.00 as a pet deposit. No rent was paid for September 15, 2014. No forwarding address was ever given to the Landlord.

The Landlord states that she only received verbal notice to end the tenancy from the Tenants on September 17, 2014. The Landlord states that on this date she agreed that the Tenants could advertise the unit to find another Tenant. The Landlord states that she was leaving on that date for a two month trip. The Landlord states that a real estate

agent friend assisted the Landlord by vetting prospective tenants and that the Tenants only found one tenant for maybe November 1, 2014. The Landlord said that this person was not suitable for various reasons including because the Landlord could not meet with this prospective tenant in person. The Landlord states that she advertised the unit herself in maybe the 3rd week of October 2014 for a one year term with rent at \$3,000.00 per month. The Landlord also states that given the difficulties while she was away the Landlord decided to hire a property company on or about October 27, 2014. the Landlord states that if the unit was advertised at \$3,500.00 it was done with the expectation of negotiating a final sum with a new tenant. The Landlord states that a renter was found for November 27, 2014 at a rental rate of \$3,300.00 per month for a one year term. The Landlord claims unpaid rent, lost rental income and the cost of the property company.

The Tenants state that they gave verbal notice to end the tenancy in mid-August 2014 and sent several emails about their move-out to the Landlord between this date and their move-out date. The Tenant states that after receiving approval to sublet the unit the Tenants advertised the unit at the current rental rate and had several responses. The Tenant states that they had 3 tenants lined up for an October 1, 2014 possession date but that the Landlord did not accept any of them. The Tenant states that the prospective tenants were a physician, a veterinarian and a woman with sufficient funds in her bank accounts to pay for three years, as confirmed in writing by the woman's lawyer. The Tenant states that this woman was rejected by the Landlord as were the others as the Landlord would not accept persons that she was not present to meet with. The Tenants state that the Landlord advertised the unit for \$3,500.00 per month.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Rent is payable until a tenancy ends. Based on the undisputed evidence of rent payable and given the date the tenancy ended I find that the Landlord has substantiated unpaid rent for the period September 15 to 30, 2014 in the amount of **\$1,500.00.**

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss.

Although the Tenant breached the fixed term tenancy agreement the Landlord is still required to mitigate any losses arising from this breach. Overall the Landlord's evidence of re-renting the unit was vague, tentative and unsupported by documentary materials, such as advertisements, emails or witness letter from the real estate agent. On the other hand the Tenants provided clear evidence of dates and who they found as prospective tenants. I therefore prefer the Tenant's evidence and accept that the Tenants did find more than one suitable tenant for October 1, 2014. I also accept that the Landlord chose not to select any of these persons only because of the Landlord's absence and inability to meet them in person. It must be noted that a landlord's obligations do not cease with the temporary absence of a landlord. I also accept that the Landlord ultimately advertised the unit for a much higher rental rate than the Tenant was paying. For these reasons I find that the Landlord failed to take any reasonable steps to mitigate losses arising from the Tenants ending the fixed term. As a result I find that the Landlord is not entitled to the lost rental income claimed and I dismiss this claim.

As the property company was obtained to carry out the regular and normal duties of the Landlord in obtaining tenants or re-renting a unit, I do not consider this evidence of mitigation. Further there is no evidence that the Tenants breached the tenancy agreement or Act in a manner that caused the Landlord to obtain someone else to carry out the regular duties of the Landlord. I find therefore that the Landlord is not entitled to compensation for the costs of the property company and I dismiss this claim. As the

Landlord has been somewhat successful with its application I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$1,600.00**.

Section 39 of the Act provides that if a tenant does not give a landlord a forwarding address in writing within one year after the end of the tenancy,

(a) the landlord may keep the security deposit or the pet damage deposit, or both, and

(b) the right of the tenant to the return of the security deposit or pet damage deposit is extinguished.

Based on the undisputed evidence that the Tenants never provided a forwarding address I find that the Landlord is entitled to retain the combined security and pet deposit plus zero interest of **\$3,000.00**. As the Landlord's entitlement is less than this amount I find that the retention of the security deposit fully satisfies the Landlord's entitlement.

Conclusion

I order the Landlord to retain the combined security and pet deposit of \$3,000.00 in full satisfaction of the Landlord's entitlement of \$1,600.00.

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: March 31, 2017

Residential Tenancy Branch