



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding MULTIPLE REALTY LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: OPR, MNR, MNSD, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and a monetary order for loss of income and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim.

Both parties attended the hearing and were given full opportunity to present evidence and make submissions. The tenant acknowledged receipt of evidence submitted by the landlord. Both parties gave affirmed testimony.

Since the tenant moved out on or about January 06, 2017, the landlord's application for an order of possession is moot and accordingly dismissed. Therefore, this hearing only dealt with the landlord's monetary claim for loss of income and the filing fee.

Issues to be decided

Is the landlord entitled to a monetary order to recover his loss of income and the filing fee? Is the landlord entitled to retain the security deposit?

Background and Evidence

The landlord testified that the tenancy started on September 01, 2016 for a fixed term of one year. The rental unit is located by the university atop a mountain and is geared for use by students. The monthly rent was \$1,400.00 payable on the first of each month. Prior to moving in the tenant paid a security deposit of \$700.00.

The tenant testified that after a few months of living in the rental unit, he found it unsuitable and on December 21, 2016, he informed the landlord that he would be moving out in January 2017. The tenant did not provide any written notice to end the tenancy but agreed to allow the landlord to show the unit to prospective tenants.

The landlord stated that upon receiving verbal notice from the tenant, he advertised the availability of the rental unit. He had some showings in early January 2017 at which time the tenant was not fully moved out. The tenant agreed that some of his belongings were left in the rental unit even though he had already moved out sometime in December 2016. The landlord stated that around mid-January 2017, while showing the unit, he found the tenant had moved out all his belongings. The tenant paid rent up to the end of January 2017.

The landlord testified that because of the location of the unit near a university and atop a mountain, it was difficult to find a tenant other than student attending that university. The landlord's search for a new tenant was further hampered by the time of year that the tenant moved out which was during a semester. The landlord continued to have showings and found a tenant for the new semester starting in April 2017. The landlord filed a copy of the tenancy agreement with the new tenant.

The tenant agreed that he did not provide the landlord with a forwarding address. The landlord stated that he used the address on the identification documents that the tenant had provided when applying to rent the unit and he was successful in locating the tenant.

The landlord is claiming loss of income for the months of February and March 2017 (\$2,800.00). The landlord is also claiming the recovery of the filing fee (\$100.00) for a total of \$2,900.00

Analysis

Section 45(2) of the *Residential Tenancy Act* states that 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 on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, on or about December 21, 2016 the tenant gave the landlord notice to end the tenancy and moved out sometime during January 2017. By giving notice on December 21, 2016 the tenant ended the tenancy prior to the end date of the fixed term which was August 31, 2017.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act*, the regulations or their tenancy agreement must do whatever is reasonable to minimize the loss.

Based on the testimony of the landlord, I find that the landlord made efforts to mitigate his losses by advertising the availability of the unit and by having approximately one showing a week. I accept the landlord's testimony that he found it difficult to find a tenant for the months of February and March 2017 because these months fell mid semester.

Based on the testimony of both parties and the documents filed into evidence, I find that the tenant ended the tenancy prior to the end date of the fixed term and that the landlord made efforts to mitigate his losses. Accordingly I find that the landlord is entitled to recover the loss of income he suffered in the amount of \$2,800.00. Since the landlord has proven his case he is entitled to the recovery of the filing fee of \$100.00.

Over all, the landlord has established a claim for a total of \$2,900.00 which consists of a loss of income for the months of February and March 2017 plus the filing fee. I order that the landlord retain the security deposit of \$700.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2,200.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$2,200.00**.

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: April 06, 2017

Residential Tenancy Branch