



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR-L, FF

Introduction

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

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

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent and utilities?

Is the landlord authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began July 1, 2017 on a fixed term until June 30, 2018. Rent in the amount of \$1,545.00 was payable on the first of each month. The landlord maintains possession of the tenants' \$772.50 security deposit paid at the start of the tenancy.

On an undisclosed date, the tenants advised the landlord they would be vacating the rental unit by the end of November 2017. Both the tenants and the landlord showed the unit to prospective renters throughout the month of November. The tenants vacated the rental unit on November 30, 2017 and the rental unit was re-rented.

The landlord testified that although a new tenancy was secured, it was not effective until December 15, 2017 therefore the landlord seeks to recover loss of rental income in the total amount of \$697.74 ($\$1,545.00/30 = \49.84 daily rental rate x 14 days).

The tenants argue that the new tenancy was to commence December 1, 2017 but for reasons unknown to them, the new tenancy did not take effect until December 15, 2017. The tenants contend that with earlier notice, they would have attempted to secure a new tenancy effective December 1, 2017 thereby mitigating the loss of rental revenue.

In reply, the landlord testified that the new tenants only gave notice of the December 15, 2017 effective date a couple days prior to December 1, 2017. The landlord testified that the new tenancy agreement was signed effective December 15, 2017.

Analysis

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on November 30, 2017. The tenants ended the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Pursuant to the Residential Tenancy Policy Guideline #30 neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties.

Because the tenants did not allege cause and the parties did not sign a mutual agreement to end tenancy, I find the tenants ended the tenancy contrary to the *Act*. In such circumstances, a landlord may be eligible to monetary compensation for loss of rental income provided the landlord can establish reasonable efforts were made to re-rent the unit. Based on the landlord's testimony and documentary evidence I find that the landlord mitigated its loss. I am satisfied the landlord's prompt action to advertise and show the unit constitutes a reasonable effort. The evidence shows the landlord made a concentrated effort to re-rent the unit effective unit December 1, 2017 yet did not secure a new tenancy unit December 15, 2017. I find it probable the landlord received little notice of the December 15, 2017 effective date, making it difficult to secure a new tenancy effective December 1, 2017. For these reasons, I find the landlord's efforts were reasonable in the circumstances and therefore find that the landlord is entitled to \$697.74 for loss of rental income.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$797.74.

In accordance with the offsetting provisions of section 72 of the *Act*, I allow the landlord to retain the \$772.50 security deposit in partial satisfaction of the monetary award and grant an order for the balance due \$25.24.

Conclusion

The landlord is entitled to \$797.74. I order the landlord to retain the \$772.50 security deposit in partial satisfaction of the monetary award and I grant an order for the balance due \$25.24.

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: July 27, 2018

Residential Tenancy Branch