



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for compensation in the amount of \$35,000.00. Both parties attended this hearing and were given full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. Both parties represented themselves.

As both parties were in attendance I confirmed service of documents. The landlord confirmed receipt of the tenant's evidence package. The tenant states that she had received the notice of hearing but the landlord had not provided any evidence of her own. The landlord responded by saying that the evidence that she had filed at the Residential Tenancy Branch office consisted of emails between the two parties and since the tenant had these emails, she did not serve the tenant with copies that she intended to rely on.

Since by her own admission, the landlord had not served her documentary evidence on the tenant, the landlord's evidence was not used in the making of this decision. I find that the landlord was served with the tenant's materials in accordance with sections 88 and 89 of the *Act*.

The landlord testified that the total amount of her claim was close to \$100,000 but upon visiting the Residential Tenancy Branch office she was informed that monetary claims in excess of \$35,000.00 were outside the jurisdiction of the Residential Tenancy Branch.

At the start of the hearing, I explained to the landlord that as per section 27 of the *Residential Tenancy Policy Guideline*, the monetary limit of my jurisdiction is limited to the same amount as the Provincial Court which is \$35,000.00 and that a claim for money that exceeds that amount must be heard in Supreme Court. I also explained to the tenant that she had the option of abandoning part of her claim to come within the jurisdictional limits of the *Residential Tenancy Act*.

The landlord chose to abandon the portion of her claim that exceeded \$35,000.00. The landlord confirmed that she understood that the abandoned portion of her monetary claim was dismissed without leave to reapply.

The tenant's documentary evidence and the testimonies of both parties have been considered in the making of this decision. As this matter was conducted over 70 minutes of hearing time, I have considered all the written evidence and oral testimony provided by the parties but have not necessarily alluded to all the evidence and testimony in this decision.

Issues to be decided

Is the landlord entitled to compensation?

Background and Evidence

The parties agreed to the following: The tenancy started on November 15, 2017 for a fixed term of one year. The end date of the fixed term was November 30, 2018. The monthly rent was \$2,350.00 due on the first day of each month.

The tenant stated that on January 23, 2018, she received an email from the landlord requesting her to end the tenancy earlier than the end date of the fixed term. The landlord did not specify a date that she wanted to end the tenancy but explained that due to the status of her health and her financial situation, she wanted to sell the rental unit. The landlord offered the tenant \$5,000.00 to end the tenancy.

The tenant stated that she started making attempts immediately to find alternative accommodation and in the mean time she allowed the landlord's realtor to show the rental unit to prospective buyers. The tenant testified that on April 14, 2018 she entered into a contract to purchase property that she could move into but the deal did not materialize. The tenant filed a copy of the contract into evidence.

On May 18, 2018, the tenant sent the landlord an email accepting her offer of \$5,000.00 for a move out date of July 15, 2018. The landlord replied later that day, informing the tenant that the market prices were down and she had to lower her selling price by a considerable amount. The landlord offered the tenant \$5,000.00 if she moved out in the first week of June 2018 or \$3,000.00 if she moved out on July 15, 2018. In a note dated June 29, 2018, the tenant informed the landlord that the earliest she could move out was July 12, 2018.

The landlord agreed that the tenant allowed the realtor to show the unit to prospective buyers, but stated that the tenant kept the unit in a messy condition. The landlord stated that the messy condition of the unit coupled with the tenant's behaviour during showings discouraged buyers from purchasing the unit. This resulted in a delay during which the market slowed down and the landlord was forced to sell at a lower price. The difference in price that the landlord was expecting and the price that the unit eventually sold for was \$65,000.00.

The landlord also testified that she had put a down payment on a property for her personal use and due to the delay in the sale of the rental unit; she was forced to borrow money to complete the deal. The landlord stated that she paid \$5,000.00 per month in interest costs. The landlord is claiming the cost of borrowing for three months in the amount of \$15,000.00. The landlord could not recall when she borrowed the money but stated that she repaid the loan after the unit sold on May 31, 2018.

The landlord testified that the new owner wanted to purchase the unit with a tenant because her daughter was out of the province and would return four months later. The landlord is now claiming rent for the remainder of the fixed term. The landlord is claiming 9,400.00 which is the total of rent for four months.

The landlord is also claiming the recovery of the filing fee of \$100.00.

Analysis

Based on the documentary evidence of the tenant, I find that the landlord requested the tenant to move out prior to the end date of the fixed term. Even if I accept the landlord's testimony that eventually the new buyer wanted the tenant to continue to reside in the rental unit, the landlord had already asked the tenant to move out as late as May 18, 2018 which is 13 days before the completion of sale of the rental unit. In addition the tenant had already made arrangements for alternative accommodation.

As stated above, in an email dated May 18, 2018, the landlord offered the tenant \$5,000.00 to move out in early June or \$3,000.00 for a move out date in July. Based on the above, I find that the tenant moved out at the request of the landlord and therefore the landlord is not entitled to collect rent for the remainder of the term. In addition, the rental unit sold on May 31, 2018 and the tenant paid rent until the last day of tenancy which was July 12, 2018.

The landlord received rent until July 12, 2018 and therefore did not suffer any loss of income for the period she owned the rental unit which is up to May 31, 2018.

Accordingly the landlord's claim for \$9,400.00 is dismissed.

The landlord clearly testified that the delay in finding a buyer resulted in a lower selling price as the market had slowed down. The landlord alleged that the tenant had caused the delay in finding a buyer as she kept the unit messy during showings. The landlord also refers to the slower market in her email to the tenant on May 18, 2018. Generally it is known the market activity is what determines the cost of buying and selling property. Based on the above I find that the landlord has not proven that the tenant is responsible for the lower selling price of the rental unit. Accordingly the landlord's claim for the price differential is dismissed.

The landlord also stated that she relied on the sale of the rental unit to fund her property purchase and because of the delay she was forced to borrow money and incurred the cost of borrowing in the amount of \$15,000.00. Since I have determined that the tenant was not responsible for the delay in finding a buyer, I dismiss the landlord's claim for the cost of borrowing money.

Since the landlord has not proven her claim she must bear the cost of filing this application

Conclusion

The tenant's application is dismissed in its entirety.

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 30, 2018

Residential Tenancy Branch