



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, FF

Introduction

On October 10, 2018, the Landlord submitted an Application for Dispute Resolution for a monetary order for money owed or compensation for damage or loss; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlord and Tenant appeared at the hearing. The hearing process was explained and the participants were asked if they had any questions. Both parties provided affirmed testimony. The Tenant testified that he received a copy of the Landlord's documentary evidence.

The parties were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing.

Issues to be Decided

- Are the Landlords entitled to a monetary order to recover unpaid rent?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on October 1, 2017, as a one year fixed term tenancy. Rent in the amount of \$3,200.00 was to be paid by the first day of each month. The Tenant paid the Landlord a security deposit of \$1,600.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants broke the fixed term tenancy agreement by moving out of the rental unit prior to the end of the fixed term tenancy. The Landlord testified that the Tenants moved out of the rental unit on June 28, 2018.

The Landlord testified that the rental unit was immediately advertised on a local website for rent at the same monthly rent; however, a new tenant was not immediately found. The Landlord testified that the advertisement was posted on June 5, 2018, and continued until the middle of August 2018. The Landlord testified that they hired a property management firm to deal with renting the unit as of July 20, 2018. The Landlord provided copies of the online advertisements. The Landlord provided a copy of the property management contract.

The Landlord testified that the rental unit was advertised at the same monthly rent of \$3,200.00 until it was lowered to \$3,000.00 on August 22, 2018. The Landlord testified that the rent was again lowered to \$2,800.00 per month as of September 2018. The Landlord testified that the rental unit was re-rented as of October 15, 2018, at a monthly rent of \$2,850.00.

The Landlord is seeking a loss of rent for the months of August 2018, and September 2018, in the amount of \$6,400.00.

In reply, the Tenant provided testimony acknowledging that he signed a one year fixed term tenancy agreement. He testified that the Tenants' gave notice to end the tenancy on June 4, 2018, and moved out on June 28, 2018. The Tenant submitted that he paid the Landlord the rent owing under the tenancy agreement for July 2018.

The Tenant testified that the Landlord renovated the garage by painting it during the month of July 2018. The Tenant submitted that between the periods of June 5, 2018, until July 20, 2018, there were no advertisements for the unit. The Tenant submitted that the Landlord did not want to show the unit until the Tenants had moved out.

The Tenant submitted that the Landlord did not reduce the amount of monthly rent she was seeking until after 76 days. The Tenant submitted that the Landlord has a duty to minimize the loss. The Tenant feels that renovating the garage and not advertising is not mitigation.

In reply, the Landlord submitted that she is not sure how the Tenant would know if there were any showings of the rental unit because he moved out of the rental unit on June 28, 2018.

Analysis

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Residential Tenancy Policy Guideline # 5 Duty to Minimize Loss provides the following information:

Efforts to minimize the loss must be "reasonable" in the circumstances. What is reasonable may vary depending on such factors as where the rental unit or site is located and the nature of the rental unit or site. The party who suffers the loss need not do everything possible to minimize the loss, or incur excessive costs in the process of mitigation.

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

Based on the evidence before me, the testimony of the Parties, and on a balance of probabilities, I find that the Tenant breached the fixed term tenancy agreement by moving out of the rental unit before the end of the fixed term.

I find that the Tenant is responsible to pay the rent owing under the tenancy agreement up to September 30, 2018, the date that the Tenant could have legally ended the tenancy.

I find that the Landlord made reasonable efforts to mitigate loss by advertising the rental unit on a local website. While the Tenant submitted that there were no advertisements for the unit from June 5 to July 20, 2018, I prefer the evidence of the Landlord who provided testimony and evidence that the unit was advertised on a local rental website as of June 5, 2018.

While the Tenant raised a concern that the Landlord did not reduce the advertised amount of monthly rent until August 22, 2018, I find that the Landlord is not required to suffer losses in the process of mitigation. I find that the Landlords actions of reducing the rent to \$3,000.00 and then \$2,800.00 were reasonable.

With respect to the Tenant's concern about renovation of the garage; I am not persuaded that painting the garage in July 2018 had any negative affect on re-renting the unit. If anything, it appears to me that repainting the garage would be a positive improvement to the prospect of re-renting the unit.

I find that the Tenant is responsible to compensate the Landlord for a loss of two months' rent in the amount of \$6,400.00.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I grant the Landlord a monetary order in the amount of \$6,500.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant ended the fixed term tenancy early. The Landlord has established a monetary claim in the amount of \$6,500.00 for a loss of rent and the cost of the filing fee. I grant the Landlord a monetary order in the amount of \$6,500.00.

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: February 05, 2019

Residential Tenancy Branch