



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 as a result of the Landlord's Application for Dispute Resolution. The participatory hearing was held by teleconference on July 4, 2019. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for damage or loss under the Act;
- authorization to retain all or a portion of the Tenant's security deposit in satisfaction of the monetary order requested pursuant to section 38; and,
- to recover the cost of the filing fee.

Both parties attended the hearing and provided testimony. Both parties confirmed receipt of each other's documentary evidence.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. I have reviewed all oral and written evidence before me that met the requirements of the Rules of Procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for money owed or damage or loss under the Act?
- Is the Landlord entitled to keep the security deposit to offset the amounts owed by the Tenants?

Background and Evidence

Both parties agree that monthly rent was \$2,800.00, and was due on the first of the month. A copy of the lease agreement was provided into evidence, which shows that the tenancy was a fixed term 1 year lease ending on May 31, 2019. The Landlord holds a security deposit and pet deposit totalling \$2,500.00.

The Landlord is seeking to recover March 2019 rent in the amount of \$2,800.00 because the unit sat empty for that month while the Landlord searched for a replacement tenant. The Landlord found a replacement tenant for April 1, 2019.

The Landlord stated that she got notified by the Tenants that they would be moving out in early January 2019. The Tenants stated this was on December 21, 2018, and they provided a copy of the text messages into evidence. The Landlord acknowledged getting this text, and asked the Tenants to post the ad on her behalf because she was out of the country until mid-February.

The Tenant stated that she was the one who reposted the ad on a couple of different sites on January 5, 2019. The Tenant stated that the Landlord requested that she post the ad for \$3,000.00, so this is what she did, because the Landlord was out of the country at the time. The Tenant stated that there was not a lot of interest at this price, and in the beginning of February, the Tenant approached the Landlord and said they should be lowering the price in order to attract more attention. The Tenant stated the Landlord then authorized her to reduce the rent to \$2,880.00 in early February. The Tenant stated that there was a small amount of interest, with 3 showings, but no one signed a lease.

The Landlord took over the rental advertisement in mid-February, and posted the ad on February 20, 2019, for \$2,800.00. The Landlord stated that she also had an agent working on her behalf who posted the ad on March 1, 2019 for \$2,980.00. The Landlord stated that there were a few showings, and she signed the rental agreement with the new tenants on March 9, 2019, for a tenancy starting April 1, 2019.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of

probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

I note the following relevant portions of the **Policy Guideline #5 – Duty to Minimize Loss:**

Failure to take the appropriate steps to minimize the loss will affect a subsequent monetary claim arising from the landlord's breach, where the tenant can substantiate such a claim. Efforts to minimize the loss must be "reasonable" in the circumstances.

[...]

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

Although I find the Tenants clearly breached the Tenancy Agreement by breaking the lease, I find the Landlord has failed to sufficiently mitigate her losses because she posted the ad at an increased amount, \$200.00 over what the Tenant was paying. I further find the Landlord compromised her ability to effectively gauge the interest level, and pricing strategy of the ad by asking the Tenants to post the ad and do the work for her. I appreciate that the Landlord was out of the country for some of the time, and that she eventually took over management of the rental advertisement. However, a significant period of time elapsed between the time the ad was posted, and the time the price was lowered. I note the ad was first posted in early January, for an additional \$200.00, and it was not until early February that it was lowered. I find the Landlord failed

to sufficiently mitigate her losses, by actively monitoring and adapting the price. I do not find it is reasonable to attempt to re-rent the unit for more money, and then hold the Tenant responsible when the unit does not re-rent in a timely manner. I dismiss the Landlord's application for March 2019 rent.

As the Landlord's application was not successful, I decline to grant the Landlord the recovery of the cost of the filing fee in the amount of **\$100.00**.

I order the Landlord to return the security and pet deposit, totaling \$2,500.00.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$2,500.00**. This order must be served on the Landlord. If the Landlord fails to comply with this order the Tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 5, 2019

Residential Tenancy Branch