



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

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

- a Monetary Order for damage or compensation, pursuant to section 67; and
- authorization to recover the filing fee from the tenants, pursuant to section 72.

Both parties attended the hearing and were each given a full opportunity to be heard, to present affirmed testimony, to make submissions, and to call witnesses.

Both parties agree that the landlord served the tenants with her application for dispute resolution via registered mail in early May 2019. The landlord did not recall the specific date she served her application. The tenants could not recall the specific date they received the landlord's application but confirmed that they did receive it in May 2019. I find that the tenants were served with the landlord's application for dispute resolution in accordance with section 89 of the *Act*.

Issues to be Decided

1. Is the landlord entitled to a Monetary Order for damage or compensation, pursuant to section 67 of the *Act*?
2. Is the landlord entitled to recover the filing fee from the tenants, pursuant to section 72 of the *Act*?

Background and Evidence

While I have turned my mind to the documentary evidence and the testimony of both parties, not all details of their respective submissions and arguments are reproduced here. The relevant and important aspects of the tenants' and landlord's claims and my findings are set out below.

Both parties agreed to the following facts. This tenancy began on July 1, 2018 and ended on February 28, 2019. This was originally a fixed term tenancy agreement set to end on June 30, 2019. Monthly rent in the amount of \$2,000.00 was payable on the first day of each month. A security deposit of \$1000.00 was paid by the tenants to the landlord. A written tenancy agreement was signed by both parties and a copy was submitted for this application.

Both parties agreed to the following facts. The tenants telephoned the landlord on January 9, 2019 and informed her that they were moving out of the subject rental property on February 28, 2019. The tenants emailed the landlord on January 10, 2019. The e-mail also informed the landlord of the tenants' intention to end the tenancy on February 28, 2019. On January 10, 2019 the landlord put up online advertisements for the subject rental property at a rental rate of \$2,200.00. Rental advertisements showing same were entered into evidence.

The landlord testified that through market research she found that similar rental units in the area were renting for more than \$2,000.00 so she increased the rental rate to \$2,200.00. The landlord testified that due to the difficulty in finding a new tenant she reduced the advertised rental rate to \$2,000.00 on February 7, 2019. Rental advertisements showing same were entered into evidence.

The landlord testified that prior to the tenants providing notice to end the tenancy, she booked a trip out of country from January 26, 2019 to February 18, 2019. Both parties agree that the tenants agreed to show the subject rental property to prospective tenants while the landlord was out of the country.

The landlord testified that while she was out of the country she checked her e-mail every day and forwarded the tenants contact information to all prospective tenants so that the tenants could arrange a showing. The landlord testified that she did not receive very many responses to her advertisements which she attributed to a slow rental market in the winter.

The landlord testified that she did her best to rent out the subject rental property but was unable to do so until April 10, 2019. The landlord testified that she signed a new tenancy agreement with new tenants on April 10, 2019 for a tenancy commencing on March 1, 2019. The landlord testified that she is seeking \$4,000.00 in lost rental income for the months of March and April 2019.

The tenants testified that the advertisements the landlord put up used photos that did not highlight the most attractive portions of the subject rental property. Both parties agree that the tenants asked the landlord to replace the online photographs with photographs provided by the tenants, and the landlord complied.

The landlord testified that she did not believe the photographs she used in her advertisements were bad but agreed to change them at the tenants' request.

The tenants testified that given the quality and location of the subject rental property and the hot rental market, the landlord should have been able to rent out the subject rental property for March 1, 2019. The tenants testified that they believed the landlord did not do her best to rent out the subject rental property and that she did not respond to e-mails sent from prospective tenants while she was on holiday from January 26, 2019 to February 18, 2019.

In support of the above contention, the tenants entered into evidence a text message chain between themselves and a prospective tenant. The text messages state that the prospective tenant was very interested in the subject rental property and emailed the landlord several times to move her application forward, but the landlord did not respond. The tenants testified that the landlord should have hired someone to manage the property and respond to all rental enquiries while she was out of town.

The landlord testified that she checked her email every day while she was on holiday and responded to all rental enquiries. The landlord entered two e-mails into evidence between herself and prospective tenants which occurred during her holiday. The landlord testified that she did not receive the emails from the prospective tenant referenced in the text messages the tenants entered into evidence.

Analysis

Under section 7 of the *Act* a landlord or tenant who does not comply with the *Act*, the regulations or their tenancy agreement must compensate the affected party for the resulting damage or loss; and the party who claims compensation must do whatever is reasonable to minimize the damage or loss.

Pursuant to Policy Guideline 16, damage or loss is not limited to physical property only, but also includes less tangible impacts such as loss of rental income that was to be received under a tenancy agreement.

Policy Guideline 5 states that where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act, the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss. This duty is commonly known in the law as the duty to mitigate. This means that the victim of the breach must take reasonable steps to keep the loss as low as reasonably possible. The applicant will not be entitled to recover compensation for loss that could reasonably have been avoided. The duty to minimize the loss generally begins when the person entitled to claim damages becomes aware that damages are occurring.

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.

I find that the landlord mitigated her damages by putting the subject rental property up for rent immediately after receiving notice to end the fixed term tenancy effective February 28, 2019. I accept the landlord's evidence that she responded to rental enquiries via e-mail during her holiday which is supported by the fact that she reduced the price of the subject rental property while on her vacation due to the lack of responses.

I find that the text messages entered into evidence by the tenants do not prove that the landlord was not responding to e-mails. I find that based on the evidence before me, it is not possible to determine what happened to the alleged e-mails or if they were sent at

all as they were not entered into evidence. I find the evidence provided by the tenants is insufficient to make a finding that the landlord was not responding to rental inquiries.

I find that using photographs of the subject rental property that were not preferred by the tenants does not constitute a failure to mitigate damages. Which photographs to use in the advertisement is subjective and the landlord agreed to change the photographs when the tenants requested she do so.

Policy Guideline 3 states that attempting to re-rent the premises at a greatly increased rent will not constitute mitigation. Pursuant to Policy Guideline 5, if I find that the party claiming damages has not minimized the loss, I may award a reduced claim that is adjusted for the amount that might have been saved.

Policy Guideline 3 states that 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 this case, the tenants ended a one-year fixed term tenancy early; thereby decreasing the rental income that the landlord was to receive under the tenancy agreement. Pursuant to section 7, the tenants are required to compensate the landlord for that loss of rental income. However, the landlord also has a duty to minimize that loss of rental income by re-renting the unit at a reasonably economic rate as soon as possible. The landlord chose to attempt to rent the unit at a rate higher than specified in the tenancy agreement for approximately four weeks before lowering the price to \$2,000.00.

I find that for the four weeks the landlord advertised the rental property over the rental rate of \$2,000.00, the landlord failed to mitigate her loss. I find that a reasonably economical rate was the rental rate stated in the tenancy agreement. The landlord is claiming two months of rent for March and April 2019, I find that due to the landlord's failure to mitigate her damages for four weeks (one month), the landlord is only entitled to receive compensation for one month of rent, in the amount of \$2,000.00

As the landlord was successful in her application, I find that she is entitled to recover the \$100.00 filing fee from the tenants, pursuant to section 72.

Conclusion

I issue a Monetary Order to the landlord in the amount of \$2,100.00.

The landlord is provided with this Order in the above terms and the tenants must be served with this Order as soon as possible. Should the tenants fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and 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: August 13, 2019

Residential Tenancy Branch