



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

FFL MNRL

Introduction

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

- A monetary award for damages and loss 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 given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

As both parties were present service was confirmed. The parties each testified that they were in receipt of the materials. Based on the testimonies I find each party was served with the respective materials in accordance with sections 88 and 89 of the *Act*.

Issue(s) to be Decided

Are the landlords entitled to a monetary award as claimed?

Are the landlords entitled to recover their filing fee from the tenants?

Background and Evidence

This fixed-term tenancy began in July 2018 and was scheduled to end July 2019. The monthly rent was \$1,000.00 payable on the first of each month. The tenants gave notice to the landlord to end the tenancy by March 1, 2019 and vacated the rental unit on April 26, 2019. Rent was paid in full through April 2019.

The landlord seeks a monetary award in the amount of \$3,000.00, the equivalent of the rent for the remaining term of the fixed-term tenancy. The landlord said that they were unable to find a new occupant, despite multiple showings, as the property was up for sale.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage.

Section 7 of the *Act* explains, “If a tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying tenant must compensate the other for damage or loss that results... A landlord who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.”

This issue is expanded upon in *Residential Tenancy Policy Guideline #5* which explains that, “Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.”

In the present case the parties agree that the tenants gave notice to the landlord to end the tenancy by March 1, 2019. The landlord submits that they took efforts to attempt to re-rent the unit but were unsuccessful. I find little evidence in support of the landlord's submissions. There are no advertisement postings or correspondence with prospective tenants. I find the landlord's testimony with no documentary evidence to be insufficient to demonstrate that any reasonable steps were taken in an attempt to mitigate their losses.

Based on the evidence, while I find that the tenant breached the fixed-term tenancy agreement by ending it before its full term, I find that the landlord has not demonstrated

that any losses incurred are due to the tenants rather than the landlord's failure to take steps to mitigate their losses. I do not find it reasonable that the landlord was not able to find a new occupant after being provided nearly eight weeks' notice. I do not find the landlord's explanation that the potential sale of the property deterred occupants to be sufficient to excuse their failure to mitigate their rental income losses.

I find that any losses incurred by the landlord is attributable, not to the tenants, but the landlords' failure to take reasonable steps to find a new occupant. As such, I dismiss the landlords' application.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

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: December 6, 2019

Residential Tenancy Branch