



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUILINI PROPERTIES LIMITED
PARTNERSHIP and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNSD, MNR, FF*

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of her claim.

Both parties attended this hearing and were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses. The tenants represented themselves. The landlord was represented by their agent. As both parties were in attendance, I confirmed service of documents. The parties confirmed receipt of each other's evidence. I find that the parties were served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income and for the filing fee?

Background and Evidence

The background facts are generally undisputed. The tenancy started on July 02, 2019 for a fixed term of one year with an end date of July 31, 2020. The monthly rent was \$1,875.00 per month and was due on the first day of each month. Prior to moving in the tenant paid a security deposit of \$937.50.

The tenant stated that due to the Pandemic, the female tenant was laid off and therefore they were unable to afford rent. As soon as the tenant found out about her employment situation on March 20, 2020, the tenants informed the landlord that they were planning to move out. The written notice to end tenancy stated an effective date of April 30, 2020 but the tenants informed the landlord that they would be out of the apartment on March 31, 2020.

The tenants asked for a move out inspection and the landlord provided a date of April 14, 2020. The move out inspection was carried out as scheduled and on that date the tenants returned the keys to the landlord who took possession of the unit.

The landlord stated that she manages a few buildings and vacancies are regularly advertised. The landlord filed copies of advertisements starting from March 31, 2020. The landlord agreed that the advertisements were not specific to this unit and did not contain any description of this particular unit. The landlord stated that a floor plan and rental amount was advertised, and the details were provided to interested parties, when they contacted the landlord.

The tenant stated that since the landlord has multiple units available for rent, there was no way of knowing whether other units were offered to prospective tenants before the dispute rental unit. The tenant added that despite offering to hand over possession on March 31, 2020, the landlord chose to take possession on April 14, 2020. The landlord replied that since the notice to end tenancy was effective April 30, 2020, she saw no reason to take possession prior to that date. The landlord submitted that showings were not done in person but by video due to the social distancing recommendation that was in effect at the time.

The landlord stated that it was difficult to find a tenant because the apartment faces a sports arena and does not have a view like the others do. She also added that the Pandemic affected the rental market making it more difficult to find a tenant for this unit.

A new tenant was found for June 30, 2020 and therefore the landlord is claiming loss of income for the months that the unit remained vacant. On April 29, 2020, the landlord made this application to retain the security deposit in partial satisfaction of her monetary claim for loss of income.

Analysis

Section 45 of the *Residential Tenancy Act*, states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of both parties, I find that, the tenant breached the tenancy agreement by giving notice to end the tenancy effective April 30, 2020, which is prior to the end date of the fixed term (July 31, 2020). The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss. 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. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit.

Based on the testimony and documentary evidence of the landlord, I find that the landlord placed advertisements on what appears to be the property management website and one popular rental website. The landlord agreed that the advertisements were not specific to this rental unit but contained the floor plan and the rental amount.

I further find that on March 20, 2020, the landlord was informed that the tenants would be moving out on March 31, 2020 and despite them wanting to hand over possession immediately, the landlord waited till April 14, 2020 to take possession of the unit. Therefore, even if a new tenant was found for April 01, 2020, the new tenant would not be able to move in prior to the current tenant handing over possession of the unit.

Based on the testimony of both parties, I find that the landlord did not make sufficient efforts to advertise this specific rental unit which may be the reason for the three-month vacancy. The landlord filed a copy of an advertisement into evidence dated March 31, 2020. The landlord was informed on March 20, 2020 that the tenant would be moving out and could have started advertising right away to increase her chances of finding a tenant for April 01, 2020.

Even though I find that the tenant breached the tenancy agreement which resulted in a loss of income for the landlord, I further find that by placing non specific advertisements on the website of the property management company and one other website 11 days after she was informed that the tenant would be moving out of the unit on March 31, 2020, the landlord did not make reasonable efforts to mitigate her losses. The landlord could have mitigated her losses by advertising this specific unit immediately, and/or lowering the rent and recovering her loss from the tenant.

Ordinarily a tenant is responsible for the loss of income suffered by the landlord due to the tenant's non-compliance with the tenancy agreement. In this case, the rental unit was vacant for three months after the tenant moved out. The landlord testified that the location of the rental unit and the ongoing Pandemic made it difficult to re-rent the unit. Therefore, I find that apart from the delayed non-specific advertising and taking possession 14 days after the tenant moved out, other factors may have contributed to the prolonged vacancy. Accordingly, I find that the tenant is not responsible for the loss of income suffered by the landlord.

Based on Section 7 of the *Residential Tenancy Act*, I find that the landlord did not do whatever is reasonable to minimize the loss. Therefore, I dismiss the landlord's claim to recover the loss of income she incurred. Since the landlord has not proven her case, she is not entitled to the recovery of the filing fee.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:

- a landlord's application to retain all or part of the security deposit, or
- a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlord requested the retention of the security deposit in partial satisfaction of the monetary claim. Because the landlord's claim has been dismissed it is appropriate that I order the return of the tenant's security deposit. The landlord is currently holding a deposit in the amount of \$937.50. I grant the tenant a monetary order in the amount of \$937.50. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlord's application is dismissed in its entirety. I grant the tenant a monetary order in the amount of **\$937.50**.

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 30, 2020

Residential Tenancy Branch