



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, MNRL-S, MNDL-S

Introduction

The landlord applies for a monetary award for: a) the cost of cleaning and repair, b) loss of rental income, and c) recovery of unpaid utility costs resulting from the tenants vacating the rental unit two months before the end of the fixed term of this tenancy.

The listed parties attended the hearing and were given the opportunity to be heard, to present sworn testimony and other evidence, to make submissions, to call witnesses and to question the other. Only documentary evidence that had been traded between the parties was admitted as evidence during the hearing.

Issue(s) to be Decided

What, if anything is owed under any of the three heads of the landlord's claim?

Background and Evidence

The rental unit is a basement suite in the landlord's house. There is a written tenancy agreement for a term commencing December 1, 2019 to December 31, 2020 at a monthly rent of \$1750.00. The tenants paid an \$875.00 security deposit.

In early October or perhaps late September, the tenants approached the landlord about leaving before the end of the tenancy. The landlord was amenable but it was made clear that while he would search for new tenants, if he failed to find suitable replacement tenants then these tenants would be responsible for the rent to the end of the term.

On this basis the tenants gave a written notice that they would vacate by the end of October. They paid the October rent. They found new accommodation for mid October. Their moving plans and the necessary cleanup were delayed a few days by

the fact that they had been exposed to a person or persons carrying the CoVid-19 virus. They were tested and showed negative by October 25.

The parties conducted a move out inspection on October 26 and signed a move-out condition report wherein the cost of cleaning and repair was agreed at \$875.00 and the tenants signed over the \$875.00 security deposit in full satisfaction.

Later a \$153.65 Hydro bill came. The tenants acknowledge responsibility for half as per the tenancy agreement: \$76.83.

Upon receiving the tenants' notice the landlord immediately started advertising for new tenants. He notes that dogs were not allowed and that he would not accept applications of more than two people.

The tenants allege and the landlord does not dispute that he offered the rental unit for rent at \$1850.00; \$100.00 more than the tenants paid under their lease. The landlord opined that \$1850.00 was "market value."

The tenants indicate that a couple, prospective tenants, were refused a tenancy by the landlord because one had a full time job but the other only a part time job. The landlord denied it. There was no evidence from either of the couple.

The tenants gave evidence about why they thought they should leave, referring to a letter from the landlord back in February concerning guests, a possible entry without proper notice, possibly for a repair, and an uncomfortable feeling about him as a result.

Analysis

Cleaning and Repair

I find that the parties resolved this claim at the move-out inspection and that the landlord has been paid in full for the agreed amount by the tenants assigning him the full deposit money.

Utilities

The landlord produces one utility bill in the amount of \$153.65. The parties agree that the tenants owe half. I award the landlord \$76.83.

Loss of Rent

In some circumstances the conduct of or lack of action by a landlord can be seen as a fundamental breach of the tenancy agreement, permitting the innocent party to repudiate the agreement and consider it at an end. The circumstances shown in this case are far from that mark. The tenants did not have good cause to end the tenancy earlier than the end of the fixed term.

Clearly, had the tenants met their obligation under the fixed term tenancy the landlord would have received \$1750.00 for November and \$1750.00 for December.

The evidence does not persuade me that the landlord was unreasonable in his requirements for new tenants. The evidence about the rejected couple is too weak and remote. It is hearsay and though admissible at this level of dispute resolution, is of very little persuasive power.

Any person suffering damage or loss is obliged to "mitigate" the loss. Residential Tenancy Policy Guideline 3, "Claims for Rent and Damages for Loss of Rent" states:

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.

The courts have noted that the burden of proving a failure to mitigate, is not a light one:

"...the burden which lies on the defendant of proving the plaintiff failed in his duty of mitigation is by no means a light one, for this is a case where a party already in breach of contract demands positive action from one who is often innocent of blame."

Red Deer College v. Michaels and Finn [1975] 5 W.W.R. 575 at 580

The landlord's requirements: no dogs, no more than two people, were not, in my view, unreasonable conditions. Indeed, these tenants met those requirements.

In this case the landlord offered the rental unit for an increased rent of almost 6%, claiming an increase in the market value of the rental. He has not provided evidence to substantiate a general increase of any amount in market rent since the rent was set with

these tenants less than twelve months earlier. It is appreciated that he was put into the position of having to re-rent solely due to the breach of the fixed term tenancy by the tenants, however, I find that he has not attempted to re-rent the premises at a “reasonably economic rent” as required by the Guideline and so he has failed to mitigate his loss.

The landlord’s claim for recover of lost rental income must be dismissed.

Conclusion

The landlord will have a monetary order against the tenants in the amount of \$76.83. There is no claim for recovery of any filing fee.

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 01, 2021

Residential Tenancy Branch