



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL, FFL

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for compensation - Section 67; and
2. An Order to recover the filing fee for this application - Section 72.

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions. The Parties each confirmed receipt of the other’s evidence package and that no recording devices were being used by them for the hearing.

Issue(s) to be Decided

Is the Landlord entitled to the compensation claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The following are agreed facts: The tenancy under written agreement started on November 10, 2019 on a fixed term to end November 30, 2020. Rent of \$2,700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected a security deposit of \$1,350.00. On February 29, 2020 the Tenant gave notice to end the tenancy for March 31, 2020. The Tenant returned the keys on that date. The Parties mutually conducted a move-out inspection on March 30, 2020. The Landlord

received the Tenant's forwarding address sometime in March 2020. The Landlord returned the security deposit to the Tenant by registered mail on April 3, 2020 less an agreed deduction that was not in relation to rent.

The Landlord states that on March 4, 202 the unit was advertised on an online site for rent of \$2,700.00. The Landlord states that on April 22, 2020 the unit was again advertised the unit on the same site for rent of \$2,700.00. The Landlord states that they subsequently rented the unit for a tenancy start date of June 1, 2020 at \$2,500.00 monthly rent. The Landlord claims lost rental income of \$2,700.00 for each of March, April and May 2020 and \$1,200.00 comprised of the rental shortfall of \$200.00 for each of the next six months to the end of the fixed term. The Landlord provides a copy of an April 22, 2020 advertisement.

The Tenant states that two sets of prospective renters who viewed the unit in early March 2020 informed the Tenant that the Landlord was seeking monthly rent of \$3,000.00 and that this amount was too high. The Tenant states that at the same time the Tenant went online and saw the Landlord's advertisement seeking rent of \$3,000.00. The Tenant states that they had no reason to keep a copy of the ad as the Landlord had agreed with the termination of the tenancy. The Tenant states that the Landlord's agent informed them that due to the coming rental changes due to COVID, the Landlord was happier that they leave than not pay rent. The Tenant states that the Landlord also returned the security deposit as that there were no damages to the unit. The Tenant states that the Landlord waited for nearly two years to make the claim by which time the Tenant could no longer retrieve the first ad.

The Landlord states that the Landlord previously had a copy of the first advertisement but that the Landlord could not later retrieve that same copy from the online rental site. The Landlord states that advertisements were only available for three months and that in June 2020 the Landlord could only access a copy of the second advertisement. The Landlord states that they had decided at the time the Tenant ended the tenancy that

they would pursue a claim for lost rental income. The Landlord states that they waited as they had two years to make the claim and just “got around to it” when they did.

The Tenant states that as the owner of an ad on the online site, the Landlord would have access to ads made from several years ago and that access only stops for the public. The Parties agree that when the Tenant indicated that they wanted to end the tenancy the Landlord offered different options for ending the tenancy including a sublease by the Tenant.

Analysis

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. The Tenant's evidence of the Landlord seeking a higher amount of rent during the initial showings held a ring of truth. It is undisputed that the Landlord did have access to the original advertisement and the Landlord's evidence of not being able to retrieve that advertisement indicates that this was caused solely by the Landlord's delay in making the application. The Landlord waited until the latest date to make their application and does not have a persuasive reason for the delay. I accept that this delay also prevented the Tenant from obtaining a copy of the Landlord's initial advertisement. For these reasons and as the Landlord did not provide any supporting evidence of their initial advertisement to re-rent the unit, I find on a balance of probabilities that the Landlord has not substantiated that they took reasonable steps to mitigate the loss claimed. I therefore dismiss the Landlord's claim for compensation. As the Landlord's claim has not met with success, I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

The application is dismissed.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: September 21, 2022

Residential Tenancy Branch