



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This is an application filed by the Landlord for a monetary claim for unpaid rent and recovery of the filing fee.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Background and Evidence

This Tenancy began on May 1, 2013 on a fixed term tenancy ending on November 1, 2013 and then ends as shown by the submitted copy of the signed tenancy agreement. The monthly rent was \$700.00 payable on the 1st of each month and a security deposit of \$350.00 was paid.

The Landlord states that the Tenant failed to provide proper notice and vacated the rental unit prior to the end of the fixed term tenancy. The Tenant confirms this in her direct testimony. The Landlord states that notice to vacate was received by text on August 1, 2013 to vacate the rental at the end of August. The Tenant confirmed this in her direct testimony and that she vacated the rental unit prior to the end of August. The Landlord states that she made reasonable efforts to mitigate any losses by immediately re-advertising the rental unit when she received the Tenant's notice to vacate on August 1, 2013. The Tenant disputes this stating that she had found a replacement Tenant to fill the 2 month gap, but was told by the replacement Tenant that the Landlord was seeking an increased monthly rent of \$800.00. This was confirmed by the Landlord who states that she wished to increase the monthly rent to cover other costs. The Landlord

stated that over the two month period between September and November 1, 2013 when the unit was re-rented that she had reduced the monthly rent from \$800.00 to \$750.00 then finally to \$700.00. The Tenant argues that the viable replacement Tenant could have replaced that void at the originally \$700.00 rent if she were allowed, instead of the increased amount of \$800.00 for which she was told.

Analysis

I accept the undisputed testimony of both parties and find that the Tenant did fail to provide proper notice to end the tenancy and that the fixed term tenancy was ended prematurely. However, I find that the Landlord has failed to reasonably mitigate any possible losses. Section 7 of the Residential Tenancy Act states,

Liability for not complying with this Act or a tenancy agreement

7 (2) A landlord or tenant 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.

It is clear based upon the undisputed testimony of both parties that the Landlord immediately re-advertised the rental unit at a higher rent of \$800.00 then the monthly rent of \$700.00. The Landlord also provided direct testimony that the asking price for the monthly rent was reduced to \$700.00 over a two month period before a new Tenant was accepted. I find that it is not reasonable to re-rent at a higher rent and that this would likely cause a lower pool of prospective Tenants, if not a delayed success in re-renting the unit. The Tenant's assertion that she had a viable replacement Tenant was unchallenged by the Landlord as she was not aware of the circumstances of why the replacement Tenant was not accepted or that the replacement Tenant had second thoughts as to the higher rent.

Residential Tenancy Branch Policy Guideline #5, Duty to minimize states,

Where the landlord or tenant breaches a term of the tenancy agreement or the Residential Tenancy Act or the Manufactured Home Park Tenancy Act (the Legislation), the party claiming damages has a legal obligation to do whatever is reasonable to minimize the damage or loss¹. 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....

If the arbitrator finds that the party claiming damages has not minimized the loss, the arbitrator may award a reduced claim that is adjusted for the amount that might have been saved.

Although the Landlord failed to make reasonable efforts to re-rent the unit by advertising it at a higher rent, I do find that the Landlord did make some effort and is entitled to a reduced claim for the Tenant failing to provide proper notice of 1 month and prematurely ending the tenancy. I grant a nominal award of \$350.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. I grant the Landlord a monetary order for \$400.00. The Tenant must be served with this Order. Should the Tenant fail to comply, this order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$400.00.

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 05, 2013

Residential Tenancy Branch

