



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (Act), regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenant RA and the landlord attended the conference call hearing and were given the opportunity to be heard, to present evidence and to make submissions. The landlord and tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary issues

Res judicata is a doctrine that prevents rehearing of claims and/or issues arising from the same cause of action, between the same parties, after a final judgment was previously issued on the merits of the case.

A hearing was held on December 08, 2015 after both parties had filed an application for dispute resolution. At that hearing part of the landlord's claim was for an Order permitting the landlord to keep the security deposit. Part of the tenant's application was

to recover half the costs of the duct cleaning from the landlord. The landlord was unsuccessful with her claim and it was dismissed. Double the security deposit was awarded to the tenants along with half the costs of the duct cleaning. The landlord has applied again for an Order to be permitted to keep the security deposit and to recover costs for duct cleaning. I declined to hear these matters, as those issues were decided upon in the December 08, 2015 Decision. To rehear those issues now would constitute Res Judicata, as defined above.

The hearing proceeded with the landlord's claim to recover a loss of rent for May, 2015.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for a loss of rental income?

Background and Evidence

The parties agreed that this tenancy started on September 03, 2014 for a fixed term that ended on March 30, 2015, thereafter, continuing as a month to month tenancy. Rent for this unit was \$1,600.00 per month due on the first of each month.

The landlord testified that the tenants did not give written notice to end their tenancy and it was the landlord's realtor who informed the landlord that the tenants were in the process of moving out. The tenants vacated the rental unit on May 01, 2015 and failed to pay rent for May. The landlord testified that she had been attempting to sell the property and had the tenants not moved out and the property had sold, the landlord would have provided the tenants with a Two Month Notice to End Tenancy.

The landlord testified that she did not advertise the property for re-rental during May, 2015 as the landlord was still trying to sell the property. The property was taken off the market in June and was re-rented at that time.

The tenant attending testified that they gave the landlord written notice to end the tenancy on April 02, 2015. This Notice was in the form of a breach of a material term

letter which was sent on April 02, 2015 by post and was put on the landlord's door with both tenants in attendance. The breach letter informed the landlord that she was in breach of a material term of their tenancy agreement as the addendum to the agreement states that the landlord will get the road graded once. The tenant testified that they had also asked the landlord verbally many times to do this work but the landlord just threatened them with eviction instead. The landlord failed to do this work during the course of the tenancy of nearly a year and the poor road conditions were damaging the tenants' car. The tenant testified that this was the only access into the property. The letter served upon the landlord gave the landlord until April 25, 2015 to grade the road and if she failed to comply then the tenants would vacate on or before May 02, 2015.

The tenant testified that the landlord did not comply and the tenants found alternative accommodation and vacated the property on May 01, 2015. The tenants therefore dispute the landlord's claim for unpaid rent or May, 2015 as the landlord failed to comply with a material term of the tenancy agreement.

The landlord disputed that she received a letter from the tenants asking her to grade the driveway or they would end the tenancy. The landlord did agree that the addendum to the tenancy agreement states that she would get the road graded once and that she had not yet done so.

Analysis

It is clear from the evidence before me that the tenants wrote a letter to the landlord about a breach of a material term of the tenancy agreement and this letter also informed the landlord that they would end the tenancy if the landlord failed to do the grading on the road to the property. It is unclear whether or not the tenants served this letter to the landlord. It is important to note that where one party provides a version of events in one way, and the other party provides an equally probable version of events; it is one person's word against that of the other and the burden of prove is not met.

However, regardless of this the landlord is required under s. 7(2) of the *Act* to mitigate any loss. This includes making attempts to re-rent the unit for the month the tenants vacated if insufficient notice is given. The landlord testified that she did not try to re-rent the unit until June as the unit was still up for sale in May. Consequently, I find the landlord did not mitigate the loss for May's rent and therefore the landlord's claim to recover unpaid rent for May is dismissed.

As the landlord's claim has no merit the landlord must bear the cost of filing her own application.

Conclusion

The landlord's 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: August 16, 2016

Residential Tenancy Branch