



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding STERLING MANAGEMENT SERVICES LTD. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and a monetary order for loss of income, unpaid utilities, cost of cleaning, rekeying the locks and the filing fee. The landlord also applied to retain the security and pet deposits in partial satisfaction of the 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 tenant represented himself. The landlord was represented by their agents.

As both parties were in attendance I confirmed service of documents. The tenant confirmed receipt of the landlord's evidence. I find that the tenant was served with evidentiary materials in accordance with sections 88 and 89 of the *Act*.

The landlord stated that he had received the tenant's evidentiary package on the morning before the hearing and had not had an opportunity to review. The tenant agreed that he was late serving his evidence on the landlord.

Pursuant to Rule 4.1 of the Residential Tenancy Branch Rules of Procedure, the respondent must serve evidence on the applicant as soon as possible and at least five (5) days before the dispute resolution proceeding. Accordingly, the tenant's documentary evidence was not used in the making of this decision.

During the hearing the landlord agreed to drop all monetary claims other than the loss of income incurred by the landlord in the amount of \$4,000.00.

Issues to be decided

Is the landlord entitled to a monetary order to recover loss of income? Did the landlord make reasonable efforts to mitigate her losses?

Background and Evidence

The tenancy started on March 01, 2018 for a fixed term ending February 28, 2019. The monthly rent was \$2,000.00 due in advance on the first of each month. Prior to moving in the tenant paid a security deposit of \$1,000.00 and pet deposit of \$1,000.00.

On August 22, 2018, the tenant gave notice to end the tenancy effective September 30, 2018. Both parties stated that they made efforts to find a tenant for October 2018, without success. The landlord filed copies of advertisements on their website and on other popular websites. The landlord stated that since the vacancy rate was very high, it was difficult to find a new tenant. The landlord lowered the rent from \$2,000.00 to \$1,650.00 and was able to find a tenant for December 01, 2018.

The landlord is seeking to recover the loss of income in the amount of \$4,000.00 which consists of rent for the months of October and November 2018

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, on August 22, 2018, the tenant gave notice to end the tenancy effective September 30, 2018 which is prior to the end date of the fixed term (February 28, 2019). By ending the tenancy prior to the end date of the fixed term, the tenant breached the tenancy agreement. 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 made efforts to find a new tenant by advertising the availability of the unit and by lowering the rent. Therefore, I find that the landlord made reasonable efforts to mitigate his losses. However, the landlord was unsuccessful in finding a tenant for October and November 2018 and therefore suffered a loss of income for these two months. Since the tenant breached the tenancy agreement which resulted in this loss of income, I find that the landlord is entitled to recover this loss.

The landlord is currently holding deposits in the amount of \$2,000.00. I order that the landlord retain the deposits in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$2,000.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$2,000.00**.

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: February 04, 2019

Residential Tenancy Branch