



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

DECISION

Dispute Codes: OPR, OPB, MNR, MNSD, FF.

Introduction

This hearing dealt with an application by the Landlord pursuant to the *Residential Tenancy Act* for orders as follows:

- A monetary order to recover unpaid rent, and compensation for loss of income, pursuant to Section 67;
- An order of possession pursuant to Section 55;
- An order to retain the security deposit plus interest pursuant to Section 38;
- An order to recover the cost of filing the Application for Arbitration pursuant to Section 72.

The notice of hearing dated December 11, 2008 was served to the tenant on December 11, 2008 by registered mail. Despite having been served the notice of hearing, the tenant did not show up for the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions. On the basis of the solemnly affirmed evidence presented at the hearing, a decision has been reached.

Issues to be decided

- Is the landlord entitled to an order of possession for unpaid rent?
- Is the landlord entitled to a monetary order to recover unpaid rent, loss of income, the filing fee, and to retain the security deposit in partial satisfaction of this claim?

Background and Evidence

The landlord testified that the tenant paid a security deposit of \$450.00 on September 15, 2008 and the tenancy began on September 18, 2008. The monthly rent is \$875.00 due in advance on the first day of the month.

The tenant failed to pay rent for December and on December 02, 2008, was served with

a ten day notice to end tenancy. The effective date of the notice was December 12, 2008. The landlord filed this application on December 11, 2008. The tenant moved out on December 12, 2008, leaving some belongings behind. Since the tenant has already moved out, the landlord withdrew his application for an order of possession. The landlord stated that the landlord spoke with the tenant who advised the landlord that the tenant had given the key to the rental suite to some relatives who would be removing the tenant's personal belongings from the rental unit. The landlord also stated that the tenant's relatives did come by and took most of the tenant's belongings away. The landlord is applying for a monetary order to recover rent for December 2008 and loss of income for January 2009.

Analysis

Where a landlord gives a notice to end tenancy and is entitled to claim damages for loss of rental income, the landlord's obligation to re-rent the rental unit begins after the relevant dispute period set out in the *Residential Tenant Act* has expired. Pursuant to section 46 (4) of the *Residential Tenancy Act* within five days after receiving the notice to end tenancy, the tenant may pay the overdue rent or dispute the notice by making application for dispute resolution. If the tenant does not pay rent or dispute the notice, the tenant is conclusively presumed to have accepted that the tenancy ends on the effective date of the notice and must vacate the rental unit, by that date. In this case the tenant did not apply to dispute the notice and accordingly, the landlord's obligation to re-rent the suite began on December 08, 2008. In addition, the tenant moved out on December 12, 2008 as per the effective date of the notice to end tenancy. The landlord stated that he did not make any attempts to re-rent the suite as the tenant's relatives did not remove all of the tenant's belongings.

I find that the landlord is entitled to rent for December 2008 and is not entitled to loss of income for January 2009 as the landlord did not make any attempts to mitigate his losses by advertising and showing the suite to prospective tenants. I also find that the landlord is entitled the recovery of the filing fee in the amount of \$50.00.

I order that the landlord retain the security deposit and interest of \$451.99 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance of \$473.01. 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 in the amount of **\$473.01**

Dated January 13, 2009.

Dispute Resolution Officer