



Dispute Resolution Services

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

Decision

Dispute Codes: OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim. At the outset of the hearing the landlord acknowledged that the tenant moved out on January 31, 2009 and on that basis I dismiss the portion of the landlord's application regarding an order of possession.

Both the landlord and the tenant participated in the teleconference hearing.

The landlord submitted evidence that was not provided to the tenant because the tenant did not provide the landlord with a forwarding address. The evidence detailed additional monetary amounts that the landlord sought to claim against the tenant for damages to the rental unit. The landlord did not amend the original application to include the new amounts claimed. Because the landlord did not serve the tenant with a copy of the additional evidence or an amended application, I did not admit or consider the landlord's additional evidence. It is open to the landlord to file a new application for the additional amounts claimed against the tenant.

Issue(s) to be Decided

Is the landlord entitled to the amounts claimed in this application?

Background and Evidence

The tenancy began on March 1, 2008 as a one-year fixed term tenancy. Rent in the amount of \$1450 was payable in advance on the first day of each month. On February 25, 2008, the landlord collected a security deposit from the tenant in the amount of

\$725. The tenancy agreement contains a liquidated damages clause that states, in part: "If the tenant ends the fixed term tenancy before the end of the original term... the landlord may, at the landlord's option, treat this Agreement as being at an end." An addendum to the tenancy agreement contains a clause regarding late fees that states as follows: "If rent is not received in full by the 1st of the month, a late fee of \$3.00 per day becomes due and payable."

The tenant failed to pay rent in the month of January 2009 and on January 10, 2009 the landlord served the tenant with a notice to end tenancy for non-payment of rent. The tenant vacated the rental unit on January 31, 2009. The landlord attempted to re-rent the unit for February 1, 2009 but was unable to do so because extensive cleaning and repairs were required. The landlord was able to re-rent the unit for March 1, 2009. The landlord claims the following monetary amounts: \$1450 for rent for January 2009; \$30 for a late payment fee for January 2009; \$1450 for lost revenue for February 2009; \$30 for a late payment fee for February 2009; and \$383 for liquidated damages, as per the tenancy agreement.

In the hearing, the tenant acknowledged that he owed the rent for January but he did not think he was responsible for the landlord's loss of revenue for February 2009, because the landlord ended the tenancy by serving the notice to end tenancy.

Analysis

The landlord has established a claim for \$1450 in unpaid rent for January 2009. As the late fee in the tenancy agreement exceeds the permissible amount allowed by the regulation, that term of the addendum is void and the landlord is not entitled to any late fees. In regard to lost revenue for February 2009, the landlord attempted to mitigate the loss by re-renting for February but was unable to do so. The landlord is therefore entitled to \$1450 in lost revenue for February 2009. In regard to the liquidated damages amount, the landlord elected to end the tenancy by serving the tenant with a notice to end tenancy, and therefore the landlord is not entitled to the liquidated damages amount. The landlord is entitled to recovery of the \$50 filing fee, for a total of \$2950.

Conclusion

I order that the landlord retain the deposit and interest of \$734.24 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2215.76. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated March 4, 2009.