



Dispute Resolution Services

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

Decision

Dispute Codes: MNR, MNSD, FF

Introduction

This hearing dealt with an application from the landlord for a monetary order as compensation for unpaid rent and utilities, loss of rental income, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee. Both parties participated in the hearing and gave affirmed testimony. As the tenants vacated the unit on February 20, 2009, the landlord no longer seeks an order of possession.

Issue to be Decided

- Whether the landlord is entitled to a monetary order under the Act

Background and Evidence

Pursuant to a written residential tenancy agreement, the year long tenancy commenced on April 1, 2008. Rent in the amount of \$1,600.00 was payable in advance on the first day of each month, and a security deposit of \$800.00 was collected on March 28, 2008.

The tenants failed to pay rent for the month of February 2009 and failed to pay utilities for November & December 2008 and January 2009. Accordingly, the landlord issued a 10 day notice to end tenancy for unpaid rent or utilities. Subsequently, the tenants failed to pay the overdue rent and utilities and vacated the unit on February 20, 2009.

The landlord indicated that after the tenants vacated the unit, it was unable to immediately be re-rented as considerable clean up and repairs were required to be undertaken. Accordingly, the landlord seeks loss of rental income for March 2009.

The landlord submitted into evidence a copy of the 10 day notice dated February 10, 2009, which the tenant acknowledged having received on that same date.

Analysis

Based on the documentary evidence and testimony of the parties, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent or utilities. The tenants did not pay the outstanding rent or utilities within 5 days of receiving the notice and did not apply to dispute the notice. The tenants are therefore conclusively presumed under section 46(5) of the Act to have accepted that the tenancy ended on the effective date of the notice which was shown on the notice to be February 10, 2009, but should read February 20, 2009. As earlier stated and as agreed by the parties during the hearing, the tenants vacated the unit on February 20, 2009.

In relation to the landlord's claim for loss of rental income for March 2009, Residential Tenancy Policy Guideline # 3 states, in part, as follows:

If the landlord elects to end the tenancy and sue the tenant for loss of rent over the balance of the term of tenancy, the tenant must be put on notice that the landlord intends to make such a claim. Ideally this should be done at the time the notice to end the tenancy agreement is given to the tenant. The filing of a claim for damages for loss of rent and service of the claim upon the tenant *while the tenant remains in possession of the premises* is sufficient notice. Filing of a claim and service upon the tenant after the tenant has vacated may or may not be found to be sufficient notice, depending on the circumstances.

In the landlord's application for dispute resolution he states, in part, that "if possession is delayed beyond February 28, 2009, I will add another \$1,600.00 dollars to the "Monetary Order." As it turns out, the landlord's possession was not in fact delayed beyond February 20, 2009. As the tenant was not therefore put on notice by the landlord of his intent to make a claim "for loss of rent over the balance of the term of tenancy" in his application, I dismiss the landlord's claim for loss of rental income for March 2009. However, the landlord is free to make a further application for dispute

resolution in regard to a claim for loss of rental income for March 2009, in addition to any costs associated with clean up and repairs in the unit which he claimed during the hearing were necessary after the tenants vacated the unit.

As for the monetary order, I find that the landlord has established a claim of \$2,199.97. This is comprised of unpaid rent of \$1,600.00 for February 2009, unpaid utilities of \$549.97 for November & December 2008 & January 2009, and recovery of the \$50.00 filing fee for this application. I order that the landlord retain the security deposit of \$800.00 plus interest of \$9.15, and I grant the landlord a monetary order under section 67 of the Act for the balance due of \$1,390.82 (\$2,199.97 - \$809.15)

Conclusion

I hereby grant the landlord a monetary order under section 67 of the Act for **\$1,390.82**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: March 31, 2009

Dispute Resolution Officer