



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 in compensation for unpaid rent / loss of rental income, one NSF fee, retention of the security deposit in partial satisfaction of the claim, and recovery of the filing fee for this application. The landlord participated in the hearing and gave affirmed testimony. Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, neither tenant appeared.

As the tenants vacated the unit subsequent to the landlord's application, the landlord withdrew her earlier application for 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 month-to-month tenancy began on February 21, 2006. Rent in the amount of \$2,280.72 was payable in advance on the first day of each month, and a security deposit of \$1,075.00 was collected at the start of tenancy.

The tenants failed to pay rent for the month of March 2009, and on March 3, 2009 they gave the landlord verbal notice of their intent to vacate the unit. Following this, the landlord issued a 10 day notice to end tenancy for unpaid rent. Subsequently, the tenants paid no portion of the outstanding rent and vacated the unit on or about March 15, 2009. The landlord submitted into evidence a copy of the 10 day notice dated March 5, 2009 which was posted on the tenants' door on that same date.

The landlord stated that the unit required considerable cleaning and repairs following the tenants' departure. In the result, the unit has not presently been re-rented and, in addition to a monetary order for unpaid rent for March, the landlord seeks compensation for loss of rental income for April 2009.

Analysis

Section 45 of the Act speaks to **Tenant's notice**. In particular, section 45(1)(a) & (b) states:

45(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Further, section 45(4) provides:

45(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

Section 52 of the Act addresses Form and content of notice to end tenancy, as follows:

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

(c) state the effective date of the notice,

(d) except for a notice under section 45(1) or (2) *[tenant's notice]*, state the grounds for ending the tenancy, and

(e) when given by a landlord, be in the approved form.

I find that the tenants' verbal notice of intent to vacate the unit does not comply with the above statutory provisions.

Further, based on the documentary evidence and undisputed testimony of the landlord, I find that the tenants were served with a 10 day notice to end tenancy for unpaid rent. The tenants did not pay the outstanding rent 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 March 15, 2009.

I dismiss the landlord's claim for recovery of a \$20.00 NSF fee, as there is no specific provision for this recovery set out in the residential tenancy agreement. However, I find that the landlord has established a claim for a monetary order in the amount of \$4,611.44. This is comprised of unpaid rent of \$2,280.72 for March 2009, loss of rental income of \$2,280.72 for April 2009, and recovery of the \$50.00 filing fee. I order that the landlord retain the security deposit of \$1,075.00 plus interest of \$37.29, and I grant the landlord a monetary order under section 67 of the Act for the balance due of \$3,499.15 (\$4,611.44 - \$1,112.29)

The landlord has the option of applying for a monetary order to recover costs associated with cleaning and repairs in the unit, as well as loss of rental income after April 30, 2009.

Conclusion

I hereby grant the landlord a monetary order under section 67 of the Act for **\$3,499.15**. This order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: May 12, 2009

Dispute Resolution Officer