



Dispute Resolution Services

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

Decision

Dispute Codes: MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. Two landlords and one tenant participated in the teleconference hearing.

The tenant stated that he was not served with notice of the hearing, only his wife received notice via registered mail. The hearing package that his wife received only included the landlord's application and the notice of the hearing. The landlord stated that they served the male tenant with his copy of the hearing package by registered mail, and both hearing packages included seven pages of photocopied rent receipts. Prior to the hearing, the tenants submitted a written response to the landlord's claim but did not make reference in that response to the receipts. The landlord submitted further evidence to the Residential Tenancy Branch, but the tenants did not receive copies of those pages either. I find that the landlord has failed to provide sufficient evidence of service of any of these documents on the tenants, and I therefore did not admit those documents as evidence in this matter.

Issue(s) to be Decided

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began in 2008, with monthly rent in the amount of \$1400. The tenants vacated the rental unit on May 30, 2009. The landlord has claimed monetary amounts against the tenants as follows:

- 1) \$1400 in unpaid rent for May 2009 – the tenants did not pay rent for May 2009, and had only paid up their April rent as of April 28, 2009;
- 2) \$1400 in lost revenue for June 2009 – the tenants did not give written notice that they would be vacating at the end of May 2009;
- 3) \$510 for previous unpaid rent – the landlord received previous monetary orders against the tenants, but the tenants did not pay the full amounts owed on those monetary orders;
- 4) \$150 for cleaning – the landlord had to haul away items that the tenants left behind, and they paid \$47 in garbage disposal costs. The landlord seeks the balance of \$103 for their time and labour.

The landlord also claimed that the tenants only paid \$540 of their security deposit.

The response of the tenants to the landlord's claim was as follows. The tenants submitted a copy of a letter to the landlord dated April 28, 2009, in which the tenants gave notice of their intention to vacate and provided their forwarding address. The tenants stated that on April 30, 2009 the tenants gave the landlord this notice to vacate and paid their rent for May 2009 at the same time. The tenant acknowledged that the landlord gave them receipts for their rent payments. However, the tenants did not provide a receipt as evidence of their payment of May 2009 rent or any other supporting evidence of this payment. The tenants stated that they paid \$700 for the security deposit, not \$540.

The tenants stated that they should not be responsible for the cleaning and garbage hauling costs because the landlord left some garbage behind after carrying out repairs, when the tenants moved out the landlord asked the tenants to leave some things behind to make the house look occupied, and the landlord was still carrying out renovations when the tenants moved out. The landlord acknowledged in the hearing that they did ask the tenants to leave some things behind to make the house look occupied.

Analysis

In regard to unpaid rent for May 2009, I accept the testimony of the landlord that the tenants did not pay rent for that month. The tenants acknowledged that the landlord would issue receipts for rent, but they did not produce a receipt for rent paid for May 2009 or any other supporting evidence to support their claim that they did pay. The landlord is therefore entitled to the \$1400 claimed for May 2009.

In regard to lost revenue for June 2009, I accept the tenant's evidence that they did provide written notice that they would vacate. The notice is dated April 28, 2009, the same date that the landlord stated the tenant paid some outstanding rent. Further, the forwarding address on the written notice is the same address identified as the address of the tenants on the landlord's application for dispute resolution. I find it more likely than not that the tenants did provide their written notice to vacate, and the landlord is therefore not entitled to lost revenue for June 2009.

In regard to the claim for \$510 owing from previous unpaid rent, I dismiss that portion of the landlord's claim as it was previously claimed and awarded to the landlord in previous dispute resolution proceedings. It is the responsibility of the landlord to enforce outstanding monetary orders against the client and those amounts cannot be added to new claims.

In regard to the cleaning costs, I find that the landlord has not provided sufficient evidence, such as photographs of the cleaning required or details of the items hauled away, to support this claim. Further, the landlord did not carry out a move-in inspection with the tenants and therefore cannot establish the condition of the rental unit at the beginning of the tenancy. I therefore dismiss this portion of the landlord's application.

In regard to the security deposit, the landlord did not provide evidence of when the security deposit was paid or how much was paid. It is the responsibility of the landlord to keep record of the security deposit. I therefore accept the tenants' evidence that the security deposit paid was \$700. Neither party provided evidence of when the security

deposit was paid, and I am therefore unable to calculate any applicable interest. In any case, the amount of accrued interest would have been negligible.

As the landlord's claim was partially successful, I find that they are entitled to partial recovery of the filing fee, in the amount of \$25, for a total claim of \$1425.

Conclusion

I order that the landlord retain the deposit of \$700 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$725. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated September 30, 2009.