

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a monetary order as compensation for unpaid rent / 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.

Despite being served by way of registered mail with the application for dispute resolution and notice of hearing, tenant "HP" did not appear.

Despite efforts made to serve tenant "TO" with the application for dispute resolution and notice of hearing, "TO" did not appear.

As the tenants have vacated the unit, the landlord withdrew the earlier application for an order of possession.

Issues to be decided

- Whether the landlord is entitled to any or all of the above under the Act.

Background and Evidence

Pursuant to a written residential tenancy agreement, the fixed term of tenancy was from July 1, 2009 to June 30, 2010. A copy of the agreement was not before me in evidence. Rent in the amount of \$1,800.00 is payable on the first day of the month, and a security deposit of \$900.00 was collected on or about July 1, 2009.

Towards the end of August 2009, the tenants verbally informed the landlord of their intent to vacate the unit in September 2009. Following this, as rent due on September 1, 2009 was not paid, the landlord issued a 10 day notice for unpaid rent dated September 4, 2009. During the hearing the tenant acknowledged receipt of the

landlord's 10 day notice. Thereafter, the tenants made no payment towards rent and vacated the unit on or about September 22, 2009.

The tenant claims the landlord was informed in late August that tenant "TO" had vacated the unit earlier in August. Neither the tenant nor the landlord have a forwarding address for tenant "TO." The landlord acknowledged that his registered mailing on September 17, 2009 of the application for dispute resolution and notice of hearing to tenant "TO," had been mailed to "TO" at the rental unit address, and was returned to the landlord.

In spite of efforts the landlord claims are being made to re-rent the unit, thus far new renters have not been found. In the application before me the landlord seeks compensation for unpaid rent / loss of rental income for September, October, November and December 2009.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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 52 of the Act address **Form and content of notice to end tenancy**, and provides in part, that in order to be effective, "a notice to end a tenancy must be in writing..."

I find that the notice given by the tenants to end this tenancy does not comply with either of the above statutory provisions.

Further, 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 dated September 4, 2009. 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.

Section 89 of the Act sets out **Special rules for certain documents** and includes provisions related to service of an application for dispute resolution. Specifically, this section of the Act provides in part, as follows:

89(1) An application for dispute resolution or a decision of the director to proceed with a review under Division 2 of Part 5, when required to be given to one party by another, must be given in one of the following ways:

- (a) by leaving a copy with the person;
- (b) if the person is a landlord, by leaving a copy with an agent of the landlord;
- (c) by sending a copy by registered mail to the address at which the person resides or, if the person is a landlord, to the address at which the person carries on business as a landlord;
- (d) if the person is a tenant, by sending a copy by registered mail to a forwarding address provided by the tenant;
- (e) as ordered by the director under section 71(1) [*director's orders: delivery and service of documents*].

There is no conclusive evidence that tenant "TO" was made aware of the hearing. Further, where it concerns service of the application for dispute resolution on him, there

is no evidence that service was undertaken pursuant to any of the above statutory provisions. Accordingly, I must dismiss the landlord's application for a monetary order in relation to "TO" with leave to reapply.

Arising out the above, Residential Tenancy Policy Guideline #13 speaks to **Rights and Responsibilities of Co-tenants**. This guideline states in part, as follows:

Co-tenants are two or more tenants who rent the same property under the same tenancy agreement. Co-tenants are jointly responsible for meeting the terms of the tenancy agreement. Co-tenants also have equal rights under the tenancy agreement.

Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord

In relation to the remedy that may be available to a landlord in these circumstances, Residential Tenancy Policy Guideline # 3 speaks to **Claims for Rent and Damages for Loss of Rent**, and provides in part as follows:

....damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy. This may include compensating the landlord for the difference between what he would have received from the defaulting tenant and what he was able to re-rent the premises for the balance of the un-expired term of the tenancy.

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent

the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

Based on the landlord's affirmed testimony, I am satisfied on a balance of probabilities that through his agent, reasonable efforts are currently being undertaken to mitigate his loss. Specifically, advertising of the unit at the same level of rent had commenced in September 2009, prior to the time when the tenants actually vacated the unit.

As for the monetary order, therefore, I find that the landlord has established a claim of \$4,550.00. This is comprised of \$1,800.00 in unpaid rent for September 2009, \$1,800.00 in loss of rental income for October 2009, \$900.00 for loss of rental income for the period November 1 to 15, 2009, and the \$50.00 filing fee. At the time of this hearing, it is premature for the landlord to seek a monetary order as compensation for loss of rental income from November 16, 2009 forward. Depending upon what success there is in finding new renters, the landlord has the option of making a further application for a monetary order.

I order that the landlord retain the security deposit of \$900.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of **\$3,650.00** (\$4,550.00 - \$900.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlord in the amount of **\$3,650.00**. Should it be necessary, this order may be served on the tenants, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 4, 2009

Dispute Resolution Officer