



Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPC, MNR, MNSD, 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. Despite having been personally served with the application for dispute resolution and notice of hearing, the tenants did not participate in the conference call hearing.

At the hearing the landlord advised that the tenants had vacated the rental unit on January 24, 2010. As an order of possession is no longer required I consider that claim to have been withdrawn.

On or about February 1, 2010 the landlord submitted an amendment to the application, increasing his claim to include a claim for lost income for the first half of February. The landlord testified that he served the amendment on the tenants by sending it by registered mail to the rental unit despite the fact that he knew they had already vacated the unit. Section 89 of the Act permits service of an application for dispute resolution by registered mail but ONLY to an address at which a tenant resides or to a forwarding address provided by the tenant. If the landlord knows that the tenant no longer resides at a rental unit, he cannot serve by registered mail to that address. I am unable to find that the tenants were served with a copy of the amended application. However, the landlord asked orally at the hearing to amend his application to include the claim for loss of income for the month of January and the first half of February as he was unaware that the tenants would be vacating at the end of January and thereby was deprived of the opportunity to advertise the rental unit to mitigate his losses. The evidence submitted by the landlord includes a letter written by the tenants in which they advised

the landlord that they would not be vacating the unit until they were comfortable doing so and warning him that it would take a number of months for him to successfully evict them. I find that on the evidence, the landlord had no reason to believe that the tenants would voluntarily vacate the rental unit at the end of January and therefore could not advertise the unit. I find that the tenants should reasonably have known that the landlord could not re-rent the unit in January while they were still residing therein and further should have known that the landlord could not advertise the rental unit when he did not know the date the tenants would make it available and accordingly I find it appropriate to permit the landlord to amend his claim.

Issues(s) to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The undisputed evidence of the landlord is as follows. The tenancy began on May 1, 2009 at which time a \$600.00 security deposit was paid. Monthly rent was set at \$1,200.00 per month. In July the tenants fell into arrears and the parties made arrangements whereby the tenants would pay off those arrears by submitting an additional \$200.00 with their rent each month. As of the date of this hearing the tenants had failed to pay \$600.00 of the July arrears. The tenants were obligated to pay for utilities for the rental unit and failed to do so for the months of June – December inclusive totalling \$668.29. The tenants failed to pay \$125.00 of their rent in the month of November and further failed to pay \$125.00 of their rent in the month of December.

During the tenancy the tenants' rent was substantially paid by the Ministry of Employment and Income Assistance (the "Ministry") directly to the landlord. At the end of December the landlord received the cheque from the Ministry for the month of January. The tenants approached the landlord and asked him to give the money to them, promising that they would use the money to find alternate accommodations for January. The landlord gave to the tenants the \$1,075.00 he had received from the

Ministry, but despite the rent having been returned, the tenants did not vacate the unit until the end of January.

Analysis

I accept the landlord's undisputed testimony and find that the tenants failed to pay \$600.00 in arrears for July, failed to pay utilities from June – December inclusive, failed to pay \$125.00 in rent for each of the months of November and December and caused the landlord to lose rental income in the month of January and in the first half of February. The landlord is granted an award as set out in the table below.

July arrears	\$ 600.00
Utilities	\$ 668.29
November arrears	\$ 125.00
December arrears	\$ 125.00
Loss of income for January	\$1,200.00
Loss of income for February 1-15	\$ 600.00
Filing fee	\$ 50.00
Less \$600.00 security deposit	\$ -600.00
Total:	\$2,768.29

Conclusion

I grant the landlord an order under section 67 for \$2,768.29. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Dated: February 08, 2010
