



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes OPR, OPB, MND, MNR, MNSD, MNDC, FF, O

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order damages and unpaid rent or utilities, and an order to retain the security deposit in partial satisfaction of the claim. Despite having been served with the application for dispute resolution and notice of hearing by registered mail on January 22, 2010, the tenant did not participate in the conference call hearing. The tenant is deemed under the *Act*, to have been served with the hearing package on January 27, 2010.

The landlord withdrew his application for an Order for Possession at the hearing as the tenant vacated the unit on or about January 31, 2010, which is therefore dismissed without leave to reapply.

The landlord withdrew his application for damages for the purposes of this hearing and asked for an order dismissing that part of his claim with leave to reapply, and I so order.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent for June, 2009 as well as for January and February, 2010?

Is the landlord entitled to a monetary order for late fees?

Background and Evidence

The tenancy began on June 7, 2009. Rent in the amount of \$1,400.00 is payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$700.00, and prorated the rent amount due for June, 2009 to \$1,119.99. The tenant paid \$1,050.00 for June, 2009. The landlord provided 3 written requests for the outstanding amount of \$69.99.

The Tenancy Agreement dated June 7, 2009 was entered into evidence by the landlord and contained a provision that rent was payable on the 1st of each month, failing which a fee of \$25.00 would be charged against the tenant.

The rent for the month of July, 2009 was also paid late, and a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities was served on the tenant, but was not acted on, and the tenant remained in the residence.

The tenant served the landlord with a 1 Month Notice to End Tenancy on December 24, 2009 which stated that the tenant would be moving at the end of January, 2010.

The landlord testified that on December 24, 2009 he gave the tenant 24 hours notice to enter the premises to show it to perspective tenants, and that on 3 occasions, he had to turn tenants away because he could not enter the unit. The letter provided as evidence is a "blanket" notice stating that the landlord's hours are 10:30 a.m. to 7:30 p.m. on weekdays and 11:00 a.m. to 6:00 p.m. on weekends, however, it goes on to state that the tenant may choose any time between those hours that suits him to allow the landlord to enter the residence to show it to perspective tenants.

The landlord also testified that the tenant did not attend at the pre-arranged time to do a condition inspection report after the tenant vacated the unit. The landlord did not know that the tenant had vacated the unit until January 31, 2010, and at that time discovered that the tenant had changed the locks on the residence without the consent of the landlord.

The landlord is also claiming \$1,400.00 for rent for the month of February, 2010 due to the tenant's breach in the tenancy agreement by refusing entry into the unit to show the unit to prospective tenants and changing the locks on the residence after the tenant had given 1 months notice to vacate the premises.

The landlord also provided as evidence a copy of a note dated January 2, 2010, signed by both parties indicating that the landlord had received \$700.00 for ½ of January's rent, and that the \$700.00 security deposit would be applied to the other ½ of the month's rent.

Analysis

I find that the tenant is required to pay the prorated amount of rent for the month of June, 2009. In my analysis, \$1,400.00 per month, divided by 30 days in the month, multiplied by 24 days in the rental unit equals \$1,120.00. I find that the tenant is responsible for \$70.00 rent for the month of June, 2009.

I also find that the tenant failed to pay \$1,400.00 in rent for the month of January, 2010, but paid \$700.00 and agreed that the landlord would retain the security deposit for the balance due for January, 2010 in the amount of \$700.00.

I also find that the tenant had an obligation to allow the landlord access to the unit once the tenant had given his notice to vacate the premises, upon being given 24 hours notice, and by not doing so, has caused the landlord to lose revenue for the month of February, 2010. In addition, I accept the landlord's testimony that the unit required cleaning and repairs that could not have been accomplished prior to February 1, 2010 due to the actions of the tenant.

Since the landlord agreed to apply the security deposit to the rent for January, 2010, I find that the landlord is not entitled to a late payment fee for January, 2010.

Conclusion

I find that the landlord has established a claim for \$2,170.00 in unpaid rent. I also find that the landlord attempted to mitigate his loss for the unpaid rent for June, 2009 and is entitled to \$25.00 per month for every month that the rent was unpaid, which totals \$200.00 in late fees for June through January, not \$400.00 as claimed by the landlord. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$700.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1,720.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Residential Tenancy Act*.

Dated: February 18, 2010.

Dispute Resolution Officer