

DECISION

Dispute Codes MNR, FF

Introduction

This hearing dealt with the landlord's request for a Monetary Order for unpaid rent and recovery of the filing fee. The tenant did not appear at the hearing. The landlord provided evidence that the tenant was served with notification of this hearing by registered mail. A search of the tracking number indicated that the tenant signed for the registered mail on December 14, 2009. I was satisfied the tenant was notified of the landlord's application and I proceeded to hear from the landlord without the tenant present.

Issues(s) to be Decided

Is the landlord entitled to unpaid rent or loss of rent for the month of December 2009?

Background and Evidence

The landlord provided the following evidence. The landlord and tenant executed a residential tenancy agreement on August 7, 2009 for a tenancy set to commence August 15, 2009. The tenancy was for a fixed term set to expire December 31, 2009. The tenant was required to pay rent of \$1,850.00 on the 1st day of every month and the tenant paid a \$925.00 security deposit. Rent did not include hydro consumption. The hydro account was in the landlord's name. On October 26, 2009 the tenant emailed the landlord and stated she no longer needed the apartment and that the landlord could start showing the rental unit to prospective renters. The landlord responded October 27, 2009 to enquire as to whether the tenant wished to end the tenancy November 30, 2009 and stated that if the landlord could not find a replacement tenant the tenant would have to fulfill the terms of the agreement. The landlord also requested written notice to end tenancy be sent to the landlord's service address. The tenant replied, via email, that

the tenant would be vacating November 30, 2009. On November 12, 2009 the tenant mailed the written notice to end tenancy to the landlord. Upon receipt of the written notice to end tenancy, the landlord commenced efforts to re-rent the unit. The landlord received the keys from the tenant in the mail with a postmark of December 3, 2009.

The landlord submitted that a prospective tenant had initially been found for January 1, 2010 and rent for December 2009 was requested from the tenant. The landlord also tried to rent the unit for December 2009 as a vacation rental unit in an effort to mitigate the loss of rent for December 2009 but was unsuccessful.

In making this application, the landlord is seeking to recover loss of rent of \$1,850.00 for the month of December 2009 and \$26.21 for hydro costs incurred by the landlord during the tenancy. The landlord also indicated she has possession of the tenant's security deposit. The landlord made this application within 15 days of the tenancy ending.

As evidence, the landlord provided copies of various emails exchanged between the parties, the tenant's written notice to end tenancy including the envelope in which it arrived, the tenancy agreement and three hydro bills for the period August 27, 2009 through November 25, 2009.

Analysis

Upon review of the tenancy agreement, I find the parties had entered into a fixed term tenancy set to expire December 31, 2009 and that the tenant was required to pay rent of \$1,850.00 per month. I also find that the tenancy agreement requires the tenant to set up utility accounts for the tenant's use.

Parties may not end a fixed term tenancy before the expiration of the fixed term except by mutual consent or for a reason provided under the Act. I do not find evidence that the tenancy ended by mutual consent or that the tenant had the legal right to terminate

the tenancy agreement before the end of the fixed term. Having heard the tenant vacated and returned the keys to the rental unit before December 31, 2009 and the did not pay rent for the month of December 2009, I find the tenant violated the terms of the tenancy agreement.

By violating the terms of the tenancy agreement, the landlord is in the position to recover the damage or loss suffered as a result of the violation. However, in order to establish an entitlement to monetary compensation, the landlord must show that she took reasonable steps to mitigate the damage or loss.

Upon review of the tenant's email of October 26, 2009 I find the email does not constitute proper service of a document and that the message did not convey sufficient information required to end a tenancy. Accordingly, I find it reasonable that the landlord waited until property written notice was received in mid-November 2009 before commencing efforts to re-rent the unit. I also find that receiving notice from the tenant in mid November 2009 is short notice to find replacement tenants for December 1, 2009. Therefore, I find the landlord entitled to recover from the tenant the loss of rent of \$1,850.00 incurred for the month of December 2009.

I also find the landlord entitled to recover utility costs incurred during the tenancy and paid by the landlord. The landlord is awarded \$26.21 for hydro costs.

Since the landlord was successful in this application, I award the filing fee to the landlord. I authorize the landlord to retain the tenant's security deposit in partial satisfaction of the rent owed the landlord and I provide the landlord with a Monetary Order calculated as follows:

Rent – December 2009	\$ 1,850.00
Hydro	26.21

Filing fee	50.00
Less: security deposit	<u>(925.00)</u>
Monetary Order for landlord	\$ 1,001.21

The Monetary Order must be served upon the tenant and may be filed in Provincial Court to enforce as an Order of that court.

Conclusion

The landlord was successful in establishing a claim for unpaid rent against the tenant. The landlord is authorized to retain the tenant's security deposit and is provided a Monetary Order for the balance of \$1,001.21 to serve upon the tenant.

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: May 04, 2010.

Dispute Resolution Officer