



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. Although served with the Application for Dispute Resolution and Notice of Hearing sent by registered mail August 23, 2010 the tenant did not appear.

At the outset of the hearing Ms. B advised that the tenant had already vacated the rental unit and that an order of possession was no longer necessary.

Issues

Is the landlord entitled to a monetary order?

Is the landlord entitled to an order allowing retention of the security deposit?

Background and Evidence

This tenancy began on July 20, 2010 and was for a fixed term ending on June 30, 2011. The rent was \$775.00 due in advance on the first day of each month. A security deposit of \$387.50 was paid at the start of the tenancy. On August 2, 2010 the tenant was served with a Notice to End Tenancy for non-payment of rent. The tenant did not pay the outstanding rent and did not file an application to dispute the Notice. The tenant vacated the rental unit on or about August 26, 2010. The landlord has been unable to re-rent the unit.

Analysis

The landlord has made a total monetary claim of \$2,735.00. This claim is comprised of unpaid rent in the amount of \$775.00 for August, lost income of \$775.00 for each of September and October; a late fee of \$20.00 for each of August, September and October; liquidated damages in the amount of \$300.00 pursuant to section 3 of the tenancy agreement and \$50.00 for the cost of this application.

Given that the tenant signed a tenancy agreement for a fixed term of one year and the fact that the landlord has been unable to re-rent the unit, I am satisfied that the landlord has established a claim for one month of unpaid rent and two months of lost income. I am also satisfied that the landlord is entitled to collect a late fee in respect of the August rent. However, I am not satisfied that the landlord is entitled to claim a late fee for September and October as this is a claim for lost income. I am also not satisfied that the landlord is entitled to claim under the liquidated damages clause because that clause is intended to deal specifically with the situation in which the tenant decides to end the tenancy before the end of the term. In this case, it is the landlord who decided to end the tenancy by way of service of a Notice to End Tenancy.

Conclusion

In conclusion, I find that the landlord has established a total monetary claim of \$2,395.00 comprised of \$775.00 in unpaid rent for August, \$775.00 in lost income for each of September and October, a \$20.00 late fee for August and the \$50.00 fee paid by the landlord for this application. I order that the landlord retain the deposit and interest of \$387.50 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$2,007.50. 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*.