

Decision

Dispute Codes: MNR, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order as compensation for unpaid rent, compensation for damage or loss under the Act, regulation or tenancy agreement, retention of the security deposit, and recovery of the filing fee. The landlords 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, the tenant did not appear. The landlords included in their evidence the Canada Post tracking number for the aforementioned registered mailing.

Issues to be decided

- Whether the landlords are entitled to any or all of the above under the Act, regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from March 5 to August 5, 2010. Thereafter, tenancy was to continue on a month-to-month basis. Rent in the amount of \$1,400.00 was payable in advance on the fifth day of each month. A security deposit of \$700.00 was collected on February 19, 2010. A move-in condition inspection and report were completed by the parties on March 5, 2010.

Arising from rent which was unpaid when due on August 5, 2010, the landlord issued a 10 day notice to end tenancy for unpaid rent dated August 6, 2010. The notice was served by way of posting on the tenant's door on that same date. Subsequently, the tenant made full payment of overdue rent on August 23, 2010.

As well, on August 23, 2010, the tenant gave verbal notice of her intent to end the tenancy. Following this, the tenant vacated the unit on September 4, 2010, and a move-out condition inspection and report were completed by the parties on September 5, 2010. Despite advertising for new renters beginning in late August 2010, new renters were not found until effective from October 1, 2010.

Analysis

The various aspects of the landlords' application and my findings around each are set out below:

\$1,400.00*: *loss of rental income for September 2010*. Based on the documentary evidence and the affirmed / undisputed testimony of the landlords, I find that the tenant's notice to end tenancy did not comply with the related statutory provisions set out in section 45 of the Act (**Tenant's notice**) or section 52 of the Act (**Form and content of notice to end tenancy**). Further, I find that the landlords undertook to mitigate their loss by way of advertising for new renters in a timely fashion on kijiji and craigslist shortly after receiving the tenant's verbal notice to end tenancy. Accordingly, I find that the landlords have established entitlement to the full amount claimed.

\$160.00: *carpet cleaning*. As the carpets were not cleaned by the landlords prior to the date when new renters took possession and, as the landlords have not therefore actually incurred any cost for carpet cleaning, this aspect of the landlords' claim is hereby dismissed.

\$189.62: *bank interest*. The landlords claim that as a result of the tenant's late payment of rent for August 2010, the landlords were unable to make a timely mortgage payment. In the result, the landlords incurred the cost of interest assessed by the bank in the amount claimed.

I find that the landlords should have reasonably foreseen the possibility that rent may not always be paid on time, and taken appropriate safeguards with regard to their mortgage payments. Accordingly, I hereby dismiss this aspect of the landlords' claim.

\$50.00*: filing fee. As the landlords have achieved some success with their application, I find that they are entitled to recovery of the filing fee.

Sub-total: \$1,450.00

In summary, based on the documentary evidence and the affirmed / undisputed testimony of the landlords, I find that the landlords have established a claim of \$1,450.00, which is comprised of the particulars set out above. I order that the landlords retain the security deposit of \$700.00, and I grant the landlords a monetary order under section 67 of the Act for the balance owed of \$750.00 (\$1,450.00 - \$700.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a monetary order in favour of the landlords in the amount of \$750.00. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and enforced as an order of that Court.

DATE: November 4, 2010

Dispute Resolution Officer