



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

Neither party provided any documentary evidence, this decision is based solely on testimony provided during the hearing.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid and lost rent; and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 7, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The parties agree the tenancy began on February 1, 2010 as a 1 year fixed term tenancy with a monthly rent of \$2,250.00 due on the first of the month and a security deposit of \$1,125.00 was paid.

The parties also agree that on August 30, 2010 the tenants gave notice that they would be moving out of the rental unit on September 16, 2010. The tenants provided testimony that they had paid a company dealing with the possible foreclosure on the rental unit rent for the period of September 1 to 15, 2010. The landlord disputes this testimony.

The landlord testified that they did not re-rent the rental unit out again and that in mid October the possession of the property changed hands as a result of the landlord's successful sale of the property.



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The landlords' claim totalled \$4,660.00 and included two months worth of rent; the \$50 filing fee for this application; insufficient fund charges (\$30.00) and registered mail charges to serve the notice of hearing documents (\$40.00) and \$40.00 that the landlord cannot remember.

Analysis

Section 45 of the Act states a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is, among other things, not earlier than the date specified in the tenancy agreement as the end of the tenancy.

As such the tenants remain responsible for rent until the end of the tenancy. As the burden of proof in an application for loss or damage belongs to the applicant, I accept, in the absence of any evidence from the landlord, that the tenant's paid rent for the period September 1 to 16 to the company dealing with the foreclosure.

Section 7 of the Act requires a party making a claim for compensation for loss or damage that results from another's non-compliance with the Act, regulation or tenancy agreement must do whatever is reasonable to minimize the damage.

As the landlord made no attempts to re-rent the unit out once the tenants provided their notice to end the tenancy, I find the landlord's failed to make any steps to minimize the damage, particularly for the month of October 2010. However, I find it reasonable that it would have been unlikely that the landlord would have been able to rent the unit out for the two week period from September 16 to 30.

As the landlords did not provide a copy of the tenancy agreement I cannot determine if the tenancy agreement included terms outlining charges for insufficient fund returned cheques, I therefore dismiss this portion of the landlord's application.

In relation to the landlord's claim for \$40.00 for registered mail charges to serve the tenants with notice of this hearing, this is a choice the landlord made in how to serve the notice and therefore not a recoverable expense.

And finally, I dismiss the landlord's claim for the \$40.00 he cannot remember.



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Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$1,175.00** comprised of \$1,125.00 rent owed and the \$50.00 fee paid by the landlord for this application.

This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) 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: January 10, 2011.

Residential Tenancy Branch