

Decision

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order as compensation for unpaid rent / compensation for damage to the unit / compensation for damage or loss under the Act, regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord participated in the hearing and gave affirmed testimony.

Despite mailing of the application for dispute resolution and notice of hearing to the tenant by way of registered mail, the tenant did not appear. Evidence submitted by the landlord includes the Canada Post tracking number for the registered mailing.

The tenant's evidence also includes the Canada Post tracking number for registered mailing of documentary evidence to the tenant subsequent to the landlord's original application.

Section 90 of the Act (**When documents are considered to have been received**) provides that documents sent by registered mail are "deemed to be received" on the 5th day after mailing.

Issues to be decided

- Whether the landlord is 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 February 1, 2010 to February 1, 2011. Monthly rent was \$2,600.00. A security deposit was collected in the total amount of \$1,300.00, as follows: \$500.00 on December 16, 2009, and \$800.00 on January 9, 2010. There is no move-in condition inspection report in evidence.

The landlord testified that by e-mail dated in mid to late September 2010, the tenant informed her of his intent to end the tenancy around mid-October 2010. It is uncertain when the tenant and his family began residing elsewhere, but rent was paid only to the end of September 2010, and all of the possessions the tenant intended to take with him were not removed from the property until approximately mid-October 2010. The tenant

informed the landlord by e-mail that anything left behind could be disposed of. The landlord testified that the tenant did not follow through with her on times proposed and / or agreed to for conducting a move-out condition inspection. It was not until October 26, 2010 when the tenant provided the landlord with a forwarding address and, thereafter, the landlord filed an application for dispute resolution on November 9, 2010.

The landlord testified that rubbish removal, extensive cleaning, miscellaneous repairs and painting were required after the tenants left. While there is no move-out condition inspection report in evidence, the landlord submitted miscellaneous invoices, receipts and photographs taken of the unit. Following the completion of rubbish removal, cleaning, miscellaneous repairs and painting, and despite advertising, new renters were not found until March 1, 2011.

Further to all of the above, the landlord submitted documentary evidence in support of actions she took in response to the tenant's concerns related to pest control. This evidence includes, but is not limited to, a receipt for temporary accommodation at a motel. Additionally, the landlord testified that any other concerns the tenant raised were dealt with in a prompt fashion. She noted that after a point, however, the tenant began expressing a desire for modernization of the unit in general (all stainless steel appliances, for example) and reasons for the tenant's early end to tenancy became questionable. Finally, while the tenant also requested compensation from the landlord for moving expenses, the landlord did not accommodate the request, and no application for dispute resolution was made by the tenant in regard to any aspect of the tenancy.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, and provides in part as follows:

45(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

- (a) is not earlier than one month after the date the landlord receives the notice,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find that the tenant failed to provide proper notice to end the tenancy, and that the landlord undertook to mitigate her loss of rental income by advertising for new renters. In the result, I find that the landlord has established entitlement to unpaid rent / loss of rental income in the combined total amount of \$10,400.00, calculated as follows: \$2,600.00 x 4 (October, November & December 2010, and January 2011.)

Further, based on the documentary evidence and the affirmed / undisputed testimony of the landlord, I find on a balance of probabilities that the landlord has established entitlement to compensation for the following costs:

\$128.00: replacement of unreturned garage door opener

\$125.00: garbage removal

\$420.00: general cleaning & carpet shampoo

\$728.00: refinish and paint

Sub-total: \$1,401.00

As the landlord has achieved a measure of success with her application, I also find that she is entitled to recover the \$100.00 filing fee.

As for the monetary order, I find that the landlord has established a claim in the total amount of \$11,901.00 (\$10,400.00 + \$1,401.00 + \$100.00). I order that the landlord retain the security deposit of \$1,300.00, and I grant the landlord a monetary order under section 67 of the Act for the balance owed of \$10,601.00 (\$11,901.00 - \$1,300.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$10,601.00**. 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.

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*.

DATE: March 10, 2011

Residential Tenancy Branch

