



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for an order of possession for unpaid rent, a monetary order for unpaid rent, to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

Issue(s) to be Decided

Are the landlords entitled to any of the above under the Act.

Background and Evidence

This fixed term tenancy began September 1, 2010 with monthly rent of \$1800.00 and the tenants paid a security deposit of \$900.00. On July 6, 2011 the landlords served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent, the tenants have not disputed this notice.

The landlord testified that the tenants have not paid all of the May, June or July 2011 rent and owe late payment fees of \$30.00 per month for the months of February through July. The landlord stated that the tenants owe \$1300.00 May 2011 rent, \$1300.00 June 2011 rent, \$1800.00 July 2011 rent and \$180.00 in late fees.

The tenant testified that they did owe the landlord \$1300.00 rent for May and \$1300.00 rent for June 2011 but did not feel that any rent was owed for July 2011 as the landlord put the house up for sale and did not re-rent it. The landlord responded by stating that they had in fact shown the property to a prospective buyer at the beginning of the month and then listed the property with a realty agent on July 13, 2011.

The tenant stated that they never had any intention of not paying rent but that due to work circumstances had been unable to and that they had vacated to avoid any further loss to the landlord.

The parties in this hearing discussed and agreed to a payment plan whereby the tenants will pay the landlord \$500.00 per month until the amount owed has been paid in full. Both parties understand that if the monthly payment plan is not adhered to that the landlord will then enforce the monetary order.

The landlord in this application is seeking \$4580.00 compensation in unpaid rent and late fees.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for unpaid rent and late fees.

The landlord is entitled to the \$2600.00 in unpaid rent for May and June 2011 however as the landlord listed the property for sale in the month of July 2011 and did not intend on re-renting the property, the landlord did not in fact suffer a loss of rental income for July and is therefore not entitled to \$1800.00 rent for July.

The landlord in this application has requested \$180.00 in late fees for the months of February through July 2011 and the tenancy agreement addendum reflects a late fee of \$30.00 payable by the tenant.

Residential Tenancy Regulation **Section 7 Non-refundable fees charged by landlord** speaks in part to:

(1) A landlord may charge any of the following non-refundable fees:

(d) subject to subsection (2), an administration fee of not more than \$25 for the return of a tenant's cheque by a financial institution or for late payment of rent;

The landlord in this application is therefore entitled to a \$25.00 per month late fee for the months of February through June 2011 for a total of \$125.00 in late fees.

Accordingly I find that the landlord is entitled to a monetary order for \$2725.00 in unpaid rent and late fees.

As the landlord has had some success in their application they are entitled to recover \$25.00 of the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim for \$2725.00 in unpaid rent and late fees. The landlord is also entitled to recover \$25.00 of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$900.00 security deposit in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$1850.00**.

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: August 11, 2011.

Residential Tenancy Branch