



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing.

The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy on a one year lease began on July 1, 2010 and ended on March 31, 2011. Rent in the amount of \$1,300.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$650.00. The Landlord advertised the unit on April 1, 2011 and it was rented as of April 15, 2011. The Landlord was unable to provide any evidence of how the tenancy ended or whether the Tenant provided notice to end the tenancy. The move-out report dated March 31, 2011 submitted by the Landlord as evidence notes the Tenant’s disagreement to the charges of unpaid rent and liquidated damages being made against the Tenant’s security deposit. The lease agreement includes the following relevant portions of the term on liquidated damages: “If the tenant ends the fixed term tenancy or is in breach of the Residential Tenancy Act or a material term of this Agreement that causes the landlord to end the tenancy before the end of the term . . . the Tenant will pay to the landlord the sum of \$650.00 . . .”

The Landlord claims unpaid rent in the amount of \$650.00 and liquidated damages in the amount of \$650.00.

Analysis

In a claim for unpaid rent, the Landlord has the burden of proving that rent was due and left unpaid by the Tenant. In a claim for liquidated damages, the Landlord has the burden to prove that the Tenant ended the tenancy or was in breach of the Act or a material term of the lease agreement. In a claim for lost rental income, the Landlord has the obligation to mitigate those losses which is sensitive to the amount of time the Landlord has to re-rent the premises and therefore also sensitive to the amount of notice provided by the Tenant. I note that the application does not include a claim for lost rental income. As the Landlord was unable to provide any evidence of how the tenancy ended, I find that the Landlord has not met the burden of proof required to substantiate an entitlement to the claims made in the application. I therefore dismiss the Landlord's application.

Conclusion

The Landlord's application is dismissed without leave to reapply. 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