



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This conference call hearing was convened in response to the landlord's application for a Monetary Order for unpaid rent and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order, and if so for what amount?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of a single detached home. Pursuant to a written agreement, the month to month tenancy started on October 15th, 2010. The rent was \$1200.00 per month and the tenants paid a security deposit of \$600.00.

In her documentary evidence, the landlord provided a comprehensive statement of events in chronological order that can be summarized as follows:

The tenants paid rent by giving the landlord post dated cheques. The cheque for January 2011 was returned to the landlord from the bank "NSF". After several attempts, the landlord finally contacted one of the tenants on January 31st, 2011 who informed her that she had moved out on January 28th, and that the co-tenant had left several weeks prior. The landlord did not receive written notice to end tenancy, and she made several unsuccessful attempts to meet with the tenants and resolve this matter informally. On February 4th, 2011, the landlord received notice from the bank that the tenants stopped payment on the cheque for February's rent. One of the tenants offered the landlord to keep her portion of the security deposit and to repay at \$100.00 per month, however this agreement never materialized and the tenants avoided returning the landlord's calls.

The landlord testified that she advertised the unit early February 2011 by placing ads on the internet and the local newspaper. She said that the unit was re-rented March 15th, 2011.

The landlord's monetary claim is as follows:

- Unpaid rent for January 2011: \$1200.00
- Loss of rental income for February: \$1200.00
- Less security deposit: \$ 600.00
- Balance owing: \$1800.00

V.H. testified that she moved out on January 11th because she never saw her roommate for that month and feared she would have to come up with the whole rent. She said that she left a message with the landlord's daughter because the landlord was away. L.M. testified that she moved out on January 26th, 2011, not the 28th, and that she dropped the key to the unit off at the landlord's daughter's residence. She said that she always gave her portion of the rent to V.H; that she never paid the landlord directly; and that she had agreed to forfeit her portion of the security deposit.

The landlord stated that although she was away, she was still available on her cell phone and by email. In her documentary evidence, the landlord provided a copy of the contact information sheet provided to the tenants, which includes four phone numbers and the landlord's email. She stated that she never received any call or notification, and that the tenants did not return any of the messages left on their cell phone.

Analysis

Section 45(1) of the Act states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice. Section 52 of the Act also provides in part that in order to be effective, a notice to end tenancy must be in writing.

It became apparent during the tenant's testimony that they had a falling out, and that it hastened an early end to the tenancy. I am satisfied on the landlord's testimony and documentary evidence that the tenants did not provide the landlord with proper notice to end the tenancy; that they did not provide a forwarding address; and that they avoided the landlord's attempts to recover her loss.

I am satisfied on the evidence that the landlord minimized her loss by advertising and renting the unit by March, and that the landlord is entitled to recover the loss of rental income as claimed.

Conclusion

The landlord established a claim of \$2400.00. I authorize the landlord to retain the tenants' \$600.00 security deposit for a balance owing of \$1800.00. Since the landlord was successful, I award the landlord recovery of the \$50.00 filing fee. Pursuant to Section 67 of the Act, I grant the landlord a Monetary Order totalling \$1850.00.

This Order may be registered 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*.

Dated: September 30, 2011.

Residential Tenancy Branch