

Decision

Dispute Codes: MNR, MNSD, FF

Introduction

This hearing was convened in response to the landlord's application for a monetary order as compensation for unpaid rent or utilities / retention of the security deposit / and recovery of the filing fee. Both parties attended and gave affirmed testimony.

Issues to be decided

- Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement

Background and Evidence

Pursuant to a written tenancy agreement, the original fixed term of tenancy was from June 22, 2011 to June 21, 2012. Monthly rent of \$1,500.00 was payable in advance on the 22nd day of each month, and a security deposit of \$750.00 was collected. A move-in condition inspection and report were not completed.

The tenants paid rent up to September 21, 2011 and by letter dated September 8, 2011, they gave notice to end tenancy. The tenants' possessions had been removed by September 17, 2011, and keys were returned to the landlord on or about September 20, 2011. A move-out condition inspection and report were not completed.

By letter of September 20, 2011, the tenants provided their forwarding address and requested the return of their security deposit. Subsequently, the landlord filed an application for dispute resolution on September 29, 2011. The landlord testified that she was successful in finding new renters for the unit effective from October 11, 2011.

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 testimony I find that notice given by the tenants to end the tenancy did not comply with the above statutory provisions. Accordingly, I find that the landlord has established entitlement to compensation for unpaid rent / loss of rental income for the limited 19 day period from September 22 to October 10, 2011. Calculation of the landlord's entitlement in this regard is as follows:

$\$1,500.00$ (monthly rent) \div 30 (# days in September) = $\$50.00$ (daily rent)

9 (# days without rent in September) x $\$50.00$ (daily rent) = $\$450.00$ (rent due)

$\$1,500.00$ (monthly rent) \div 31 (# days in October) = $\$48.39$ (daily rent)

10 (# days without rent in October) x $\$48.39$ = $\$483.90$ (rent due)

I find the landlord has also established entitlement to recovery of the $\$50.00$ filing fee.

I find that the landlord has established a total claim of $\$983.90$ ($\$450.00 + \$483.90 + \$50.00$). I order that the landlord retain the security deposit of $\$750.00$ and I grant the landlord a monetary order for the balance owed of $\$233.90$ ($\$983.90 - \750.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **$\$233.90$** . Should it be necessary, this order may be served on the tenants, 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: December 13, 2011

Residential Tenancy Branch