



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 dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by two agents for the landlord, the tenant and her agent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on December 1, 2011 for a 6 month fixed term tenancy beginning on December 1, 2011 for a monthly rent of \$1,290.00 due on the 1st day of each month with a security deposit of \$625.00 paid on September 24, 2009.

The tenancy agreement includes a clause that states "The rent increase to \$1,300.00 per month goes into effect February 1, 2012." The tenancy agreement also has a clause allowing the landlord to charge a \$25.00 fee for returned cheques or late payments.

The parties confirmed the landlord issued a 10 Day Notice to End Tenancy for Unpaid Rent in March 2012 and the landlord's agent testified that the last time they spoke to the tenants was March 6, 2012.

The landlord's agent also testified that she had had email communication ongoing with the tenants. The tenant testified the last communication she had with the landlord's agents was on March 6, 2012 by phone. Neither party provided copies of email correspondence.

The landlord's agent testified that because these had been long term tenants, through previous tenancy agreements the landlord worked with them as they knew there were

some financial concerns for the tenants. The tenant testified that both she and the male tenant were both having serious medical problems.

The tenant testified that they moved out of the rental unit based on the 10 Day Notice to End Tenancy for Unpaid Rent, as she thought she was required to do. The landlord's agents testified the first time they knew the tenants had vacated the rental unit was May 31, 2012.

The landlord seeks compensation for unpaid rent for the months of January, February, March, April and May 2012 and late fees for January, February, and March 2012 and for late fees from the previous tenancy agreement.

Analysis

Based on the undisputed evidence of the landlord I find the tenants did fail to pay rent for the months of January, February and March 2012 and the landlord is entitled to rent and late fees for these months.

However as to the amount of rent owed for the months February and March 2012, I note that the landlord had imposed a rent increase that was contrary to the provisions of Section 42 of the *Act* that stipulate that a landlord must not impose a rent increase for at least 12 months after the date on which the tenant's rent was first established under the tenancy agreement.

As the tenancy agreement submitted into evidence was signed by the parties on December 1, 2011 for a tenancy beginning on December 1, 2011, I find the earliest a rent increase could have been imposed was December 1, 2012.

In addition, Section 42 also requires that the landlord give the tenant notice of a rent increase at least 3 months before the effective date of the increase and that the notice must be in the approved form. Based on the above, I find the term in the tenancy agreement increasing rent on February 1, 2012 is not a rent increase as allowed by the *Act* and is therefore not enforceable.

As to the landlord's claim for late fees from the previous tenancy, I find that because the parties entered into a new tenancy on December 1, 2011 and the majority of the landlord's claim relates to this tenancy the landlord cannot combine a claim for two separate tenancies in one Application for Dispute Resolution. As such, I dismiss this portion of the landlord's claim with leave to reapply for losses under the previous tenancy agreement.

Section 7 of the *Act* states that if a landlord claims compensation for loss that results from the tenant's failure to comply with the *Act* (i.e. pay rent) the landlord must do whatever is reasonable to minimize the damage or loss.

In relation to the landlord's claim for rent for April and May 2012, as the tenant disputes the landlord's agent's testimony as to when they last communicated and the absence of any testimony from the landlord's agents that they actually took any steps to confirm if the tenants had vacated the rental unit in accordance with the 10 Day Notice to End Tenancy for Unpaid Rent, I find the landlords have failed to take *any* steps to minimize the loss of rent, as is required under Section 7 of the *Act*.

For this reason, I dismiss this portion of the landlord's claim without leave to reapply.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$3,995.00** comprised of \$3,870.00 rent owed; \$75.00 late fees owed; and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$625.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,370.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: July 30, 2012.

Residential Tenancy Branch