



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The landlord attended the conference call hearing, gave affirmed testimony and provided evidentiary material prior to the commencement of the hearing. However, despite being separately served with the Landlord Application for Dispute Resolution and notice of hearing documents by registered mail on July 28, 2012 to each of the named respondents, the respondents did not attend. The landlord provided proof of serving each of the tenants on that date and in that manner, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The landlord testified that the parties entered into a fixed term tenancy agreement on July 5, 2011 for a tenancy to begin on August 1, 2011 and to expire on July 31, 2012. A copy of the tenancy agreement was provided for this hearing. Rent in the amount of \$1,100.00 per month was payable in advance on the 1st day of each month. As an incentive for rental, the landlord did not collect a security deposit or a pet damage deposit from the tenants.

The landlord further testified that the tenants failed to pay rent when it was due for the month of November, 2011 but paid \$500.00 on November 8, 2011 and \$360.00 on November 22, 2011, leaving a balance outstanding of \$240.00. The tenants further failed to pay any rent for the months of December, 2011 or January, 2012. The landlord served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on January 16, 2012 by registered mail. A copy of the notice and receipt for the registered mail was provided for this hearing. The notice is dated January 16, 2012 and states that the tenants failed to pay rent in the amount of \$1,100.00 that was due on December 1, 2011 and contains an expected date of vacancy of February 1, 2012.

The landlord hired a property management company on January 26, 2012 and on February 1, 2012 the property manager attended the rental unit and told the tenants they had to vacate. The property manager told the landlord that upon arriving at the rental unit, the property manager was greeted by the tenants' dog, and no pets were to be in the rental unit. The tenants did vacate the rental unit on February 1, 2012 and the landlord ran advertisements on Kijiji, an on-line advertising company and provided a copy of a listing of interested renters commencing on March 19, 2012. The property manager also advertised the rental unit and advised the landlord that the rental unit had to be cleaned prior to showing, although no evidence of advertising has been provided.

The rental unit was re-rented for August 1, 2012. The landlord testified that in the particular geographical area there are numerous rentals available and more rentals than renters, and re-renting was difficult. The landlord claims \$8,800.00 for unpaid rent from December 1, 2011 to July 31, 2012. The landlord was provided an opportunity to provide evidence of having advertised the rental unit for rent, but did not do so.

The landlord hired a cleaning company and testified that the rental unit was littered with dog feces and urine. The landlord paid \$330.00 for that service and claims that amount as against the tenants, although no receipt or invoice has been provided. The landlord also testified that no move-in or move-out condition inspection reports were completed.

The tenants also left without returning or leaving behind the garage door opener and a replacement was necessary at a fee of \$250.00. The landlord claims that amount as against the tenants, however no receipt or invoice, nor any other evidence supporting that claim has been provided.

The landlord had to hire a skip tracing unit to locate the tenants to serve these documents, and the landlord claims that fee from the tenants in the amount of \$289.80 and provided a receipt to substantiate that cost.

Analysis

Firstly, with respect to the landlord's claim for unpaid rent, the *Residential Tenancy Act* states that any party who claims an amount from another party must do whatever is reasonable to mitigate, or reduce the loss suffered. That is also true for fixed term tenancies. The landlord has provided testimony that the tenancy ended on February 1, 2012 after the landlord served the tenants with a notice to end the tenancy for unpaid rent. The landlord also testified that the tenants owe \$240.00 for rent for November, 2011, as well as full rent for December, 2011 and January, 2012 and the tenancy ended on February 1, 2012. I have reviewed the notice to end tenancy as evidence of rent owed to the landlord and it states that as at the date that it was issued, being January 16, 2012, the tenants failed to pay rent in the amount of \$1,100.00 for December that was due on December 1, 2011. The notice does not indicate that any portion of November's rent has been unpaid. However, the notice also states that the tenants failed to pay rent in the amount of \$1,100.00 following a written demand on January 1, 2012, and the landlord has altered the form to remove the word, "Utilities," and replace it with "Rent (January)." If the landlord's testimony was accurate, I would think that the notice to end tenancy would indicate that the tenants owed rent for some of November and all of December and January. I have also reviewed the emails provided by the landlord for this hearing which speak to the tenants agreeing that \$2,200.00 is owing as of January, 2012, but no mention of November's rent is contained in emails from either the tenants or the landlord. In the circumstances, I accept the testimony of the landlord that the tenants are indebted to the landlord \$1,100.00 for December, 2011; and \$1,100.00 for January, 2012.

The landlord was given an opportunity to provide evidence of mitigation for the balance of the fixed term, but failed to do so. The only evidence of mitigation before me is a list of replies to an advertisement starting on March 19, 2012. I have no evidence that the landlord attempted to re-rent the rental unit prior to March 19, 2012, and I am not satisfied that the landlord did whatever was reasonable to mitigate any loss of rental revenue.

With respect to the application for recovery of cleaning costs and recovery of the cost of the garage door opener, again the landlord provided no evidence of these costs, and therefore, the application must be dismissed.

With respect to the landlord's claim for recovery of fees to complete skip tracing, the *Residential Tenancy Act* states that:

Director's orders: fees and monetary orders

72 (1) The director may order payment or repayment of a fee under section 59 (2) (c) *[starting proceedings]* or 79 (3) (b) *[application for review of director's decision]* by one party to a dispute resolution proceeding to another party or to the director.

(2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

There is no provision in the *Act* for skip tracing fees, and therefore, that portion of the landlord's application must also be dismissed.

In summary, I find that the landlord has established a claim as against the tenants in the amount of \$2,220.00, being \$1,100.00 for rent for December, 2011; and \$1,100.00 for rent for January, 2012. Since the landlord has been partially successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of this application.

The balance of the landlord's application is dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$2,300.00.

This order is final and binding on the parties and may be enforced.

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: October 30, 2012.

Residential Tenancy Branch