



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, 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. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent / loss of revenue - Section 67;
3. An Order to retain the security deposit - Section 38
4. An Order to recover the filing fee for this application - Section 72.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Residential Tenancy Act (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. The landlord advised the tenant vacated, therefore an Order of Possession is not required.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the landlord entitled to the monetary amounts claimed?

Background and Evidence

The undisputed evidence in this matter is that the rent in the amount of \$1350.00 was payable in advance on the first day of each month. The hearing was without benefit of a tenancy agreement. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$600.00 which the landlord retains in trust. The tenant failed to pay rent in the month of September 2012 and on September 16, 2012 the landlord served the tenant with a notice to end tenancy for non-payment of rent by posting it on the tenant's door. The landlord testified that they do not know if the tenant occupied the rental unit on September 16, 2012, and further did not know if the tenant vacated in accordance with the effective date of the Notice to End of September 26, 2012; but, they were advised early in the first week of October 2012 by another occupant of the residential property that the tenant had previously vacated. The quantum of the landlord's monetary claim is for the unpaid rent for September 2012 and loss of revenue for October 2012.

Analysis

Based on the landlord's undisputed testimony I find that the tenant was served with a notice to end tenancy for non-payment of rent and I find the notice to be valid. The tenant has not paid the outstanding rent and has not applied for Dispute Resolution to dispute the notice and is therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the notice. In the absence of evidence to the contrary, I find the tenancy ended September 26, 2012. I find that it was available to the landlord to confirm the tenant's compliance with the Notice to End following the effective end of the tenancy. On balance of probabilities, I accept the landlord was not able to find a new tenant for October 01, 2012. The landlord has not provided evidence respecting what efforts the landlord made thereafter to re-rent the unit as soon as possible so as to mitigate losses of revenue – only as an example, efforts to re-rent the unit for October 15, 2012.

I find that the landlord has established a monetary claim for \$1350.00 in unpaid rent for September 2012. I grant the landlord loss of revenue for October 01 – October 15,

2012 in the amount of \$675.00, with leave to reapply should the landlord have evidence of efforts made to mitigate further losses of revenue. The landlord is also entitled to recovery of the \$50 filing fee, for a total entitlement of **\$2075.00**. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

Rental Arrears	\$1350.00
Filing Fees for the cost of this application	50.00
Landlord's entitlement	\$2075.00
<i>Less Security Deposit</i>	<i>-600.00</i>
Total Monetary Award	\$1475.00

Conclusion

I Order that the landlord retain the security deposit of \$600.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$1475.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: November 01, 2012

Residential Tenancy Branch