



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR

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 the landlord's agent.

The landlord testified the tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on September 15, 2012 to the forwarding address provided by the tenant to the landlord in accordance with Section 89. As per Section 90, the documents are deemed received by the tenant on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that the tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent, pursuant to Sections 67, and 72 of the *Act*.

Background and Evidence

The landlord testified the tenancy began on July 1, 2012 as 6 month fixed term tenancy with a monthly rent of \$900.00 due on the 1st of each month with a security deposit of \$450.00 paid.

The landlord testified that on August 2, 2012 the tenant provided verbal notice of his intention to vacate the rental unit and vacated it on August 28, 2012. The landlord testified the tenant only allowed the landlord to show the unit beginning on August 25, 2012 and as such was not able to re-rent the unit until October 1, 2012. The landlord seeks compensation for the loss of rental income for the month of September 2012.

The landlord also testified the tenant caused damage to the rental unit that required repairs to walls and painting. The landlord provided no evidence to confirm the condition of the rental unit either at the start or the end of the tenancy. The landlord identified an additional \$180.00 as part of his claim.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

As the end date of the fixed term tenancy agreement was December 31, 2012 I find the tenant was responsible for the payment of rent for the duration of the tenancy and when he issued his notice to end the tenancy for the end of August 2012 the tenant breached Section 45(2) of the *Act*.

I accept the landlord took reasonable steps to mitigate this loss and as a result reduced the tenant's obligations to be only for the month of September 2012. I find the landlord is entitled to compensation in the amount of \$900.00 for the lost rental income.

As the landlord did not submit, in his Application for Dispute Resolution, that he was seeking compensation for damage to the rental unit or provide any evidence of the condition of the rental unit at either the start or end of the tenancy I dismiss the portion of the landlord's claim for \$180.00.

I also note that since the landlord had not requested in his Application for Dispute Resolution to retain the security deposit, I make no finding on its disposition and leave it with the landlord to ensure all matters related to the security deposit are completed in accordance with the *Act*.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$900.00** comprised of rent owed.

This order must be served on the tenant. If the tenant fails 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: December 04, 2012.

Residential Tenancy Branch