



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNSD, MNR, 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 – Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain all or part of the security deposit – Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was personally served with the application for dispute resolution and notice of hearing on January 10, 2013 in accordance with Section 89 of 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.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to an Order of Possession?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on December 1, 2011. Rent of \$950.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$475.00 as a security deposit from the Tenant. The Tenant failed to pay rent for the January 2013 and on January 4, 2013 the Landlord personally served the Tenant with a

10 day notice to end tenancy for unpaid rent (the "Notice"). The Tenant did not pay the rental arrears and moved out of the unit at the end of January 2012. The Tenant did not leave the unit damaged. The Landlord did not provide any evidence of advertising the unit for the next rental and states that because the Tenant did not provide notice of leaving, the Landlord did not have a full month to find another tenant. The Landlord claims unpaid rent for January 2013 and lost rental income for February 2012. The Landlord no longer requires an order of possession.

Analysis

Section 46 of the Act requires that upon receipt of a Notice to End Tenancy for non-payment of rent the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an Application for Dispute Resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Where a Landlord has elected to end a tenancy because of non-payment of rent, a tenant is not liable to pay rent after the tenancy agreement has ended. If however, the tenant remains in possession of the premises, the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises. The Landlord in this case elected to end the tenancy agreement for unpaid rent by serving the Notice with a move-out date of January 14, 2013. AS the Tenant remained in the unit until the end of January 2013, I find that the Landlord has substantiated unpaid rent of **\$950.00**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established.

As the Landlord ended the tenancy, the Tenant was not required to provide notice of ending the tenancy. As the Tenant left the unit undamaged and moved out before February 2013, I find that the Landlord has not substantiated that the Tenant caused a loss of rental income for February 2013. It is also noted that the Landlord did not provide evidence that any attempts were made to mitigate a loss for February 2012, such as advertising the unit for rent as soon as the Tenant failed to pay the arrears or make an application to dispute the Notice. As such I dismiss the Landlord's claim for lost rental income.

The Landlord is entitled to recovery of the **\$50.00** filing fee, for a total entitlement of **\$1,000.00**. Setting the security deposit of **\$475.00** plus zero interest off the entitlement leaves **\$525.00** owing by the Tenant to the Landlord.

It is noted the Landlord has possession of the unit and does not require an Order of Possession.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$475.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$525.00**. If necessary, this order may be 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*.

Dated: February 04, 2013

Residential Tenancy Branch

