



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR OPB MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord participated in the teleconference hearing, but the tenant did not call into the hearing. On January 29, 2013 the landlord served the tenant with the application for dispute resolution and notice of hearing by registered mail. Section 90 of the Act states that a document is deemed to have been served five days after mailing. I find that the tenant is deemed served with notice of the hearing on February 3, 2013.

At the outset of the hearing the landlord stated that the tenant has vacated the rental unit. Accordingly, I dismissed the portions of the landlord's application regarding an order of possession.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenant first began occupying the rental unit on January 1, 2012. The landlord and the tenant entered into a subsequent fixed-term tenancy agreement to begin on January 1, 2013 and end on December 31, 2013. Rent in the amount of \$1300 was payable in advance on the first day of each month. At the outset of the tenancy, the landlord collected a security deposit from the tenant in the amount of \$650 and a pet deposit in the amount of \$300. The tenant failed to pay rent in the month of January 2013 and on January 22, 2013 the landlord served the tenant with a notice to end tenancy for non-

payment of rent. The tenant vacated the rental unit on January 30, 2013. The landlord was unable to re-rent the unit until February 15, 2013.

The landlord has claimed the following amounts:

- 1) \$1300 in unpaid rent for January 2013
- 2) \$650 in lost revenue for February 1 – 14, 2013
- 3) \$100 for replacement of 2 lost fobs
- 4) \$150 for cleaning and repairs
- 5) \$950 for the administrative cost of re-renting – clause 10 of the addendum to the tenancy agreement sets out that if the tenant breaches the fixed term, he will pay \$950 towards the costs of re-renting the unit. The landlord stated in the hearing that this amount represented the fee that the landlord previously paid to a rental agency for help in re-renting the unit.
- 6) \$75 for an NSF fee, as per item 10 of the addendum to the tenancy agreement.

Analysis

Based on the landlord's evidence, I find that the landlord is entitled to the amounts claimed for January 2013 rent; lost revenue for February 1 – 14, 2013; and \$100 for replacement of the 2 lost fobs.

I find the landlord is not entitled to the amount claimed for cleaning and repairs, as she did not provide evidence of the cleaning and repairs done. Nor did she provide a copy of a move-in condition inspection report to show the condition of the rental unit at the outset of the tenancy.

I find that the landlord is not entitled to the amount claimed for the cost of re-renting. The landlord did not provide sufficient evidence to establish that the amount of \$950 was a genuine pre-estimate of the cost of re-renting rather than a penalty for breaching the lease. The landlord would have had to incur those costs at the end of the fixed term in any case, if she had chosen to re-employ the rental agency to assist her in re-renting the unit again.

The landlord is not entitled to the \$75 claimed for an NSF fee. A landlord may not claim a fee greater than \$25 for an NSF fee; therefore, that clause of the addendum is contrary to the Act and void.

As the landlord's claim was only partially successful, I find she is not entitled to recovery of the filing fee for the cost of her application.

Conclusion

The landlord is entitled to \$2050. I order that the landlord retain the security and pet deposits of \$950 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$1100. 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: March 1, 2013

Residential Tenancy Branch

