



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR; MNDC

Introduction

This is the Landlord's application for a Monetary Order for unpaid rent.

The Landlord gave affirmed testimony at the Hearing.

The Landlord testified that on November 23, 2012, he mailed the Notice of Hearing documents and documentary evidence to both of the Tenants in the same envelope, by registered mail, to the Tenant's forwarding address. The Landlord provided a copy of the registered mail receipt and tracking number in evidence. A search of the Canada Post tracking system indicates that the documents were successfully delivered to the female Tenant on November 27, 2012.

Sections 88 and 89 of the Act determine the method of service for documents. The Landlord has applied for a Monetary Order which requires that the Landlord serve **each** of the Tenants as set out under Section 89(1). In this case only the female Tenant has been served with the Notice of Hearing documents. Tenants are jointly and severally responsible for the payment of rent under a tenancy agreement. In other words, the Landlord may choose to seek a monetary award against one or both of the Tenants. The Landlord stated that he wished to proceed against the female Tenant only. The Landlord's claim against the male Tenant was dismissed without leave to reapply.

Rule 10.1 of the Residential Tenancy Branch Rules of Procedure provides as follows:

Commencement of Hearing The hearing must commence at the scheduled time unless otherwise decided by the arbitrator. The arbitrator may conduct the hearing in the absence of a party and may make a decision or dismiss the application, with or without leave to re-apply.

This application was scheduled to be heard via teleconference on February 27, 2013, at 9:30 p.m. The Landlord signed into the Hearing on time and provided his testimony. I waited until 9:40 a.m. for the Tenants to sign into the conference. Neither of them signed in by 9:40 a.m. I then gave the Landlord my Decision orally. It is important to note that the male Tenant signed into the conference at 9:41 a.m., just after the Decision had been rendered.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent from September 1 – 15, 2012?

Background and Evidence

The Landlord gave the following testimony:

A copy of the tenancy agreement was provided in evidence. This was a one year lease, commencing September 1, 2012. Monthly rent was \$1,325.00, due the first day of each month. The Tenants paid a security deposit in the amount of \$665.00 on August 15, 2012.

The Landlord stated that the Tenants did not pay rent when it was due on September 1, 2012, and moved out of the rental unit on September 4, 2012. He stated that the Tenants told him that they were cancelling the tenancy agreement because the rental unit was unlivable. The Landlord stated that he was able to re-rent the rental unit effective September 15, 2012, and that his new tenants are happy in the rental unit. The Landlord provided a copy of a letter from the new tenants confirming that the residence was “ready to be lived in” and “has been properly managed since the move-in date”.

The Landlord seeks a monetary award in the amount of \$665.00 for unpaid rent. He asked that he be allowed to apply the security deposit in full satisfaction of his monetary award.

Analysis

Section 45(2) of the Act provides that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that is **not earlier than the date specified in the tenancy agreement as the end of the tenancy** (in this case, not earlier than August 30, 2013). Section 45(3) of the Act states that **if** a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation **within a reasonable period after** the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice. I find that the Tenants did not comply with Section 45 of the Act and that the Landlord suffered a loss of revenue as a result of the Tenants’ breach of the Act.

Based on the Landlord’s undisputed testimony, I find that the Landlord has established a monetary award against the female Tenant for unpaid rent for September 1 - 15, 2012, in the amount of **\$665.00**.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlord may set off the security deposit in satisfaction of the award.

Conclusion

I find that the Landlord is entitled to a monetary award in the amount of **\$665.00**. The Landlord may set off the security deposit in full satisfaction of his monetary award.

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 27, 2013

Residential Tenancy Branch

