



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for unpaid rent or utilities; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; and to recover the filing fee from the tenants for the cost of the application.

Both landlords attended the conference call hearing and gave affirmed testimony, however despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on December 21, 2012, neither of the tenants attended. The landlords provided evidentiary material prior to the commencement of the hearing which includes an original Canada Post receipt showing the date of purchase of the registered mail service and 2 original registered mail ticket receipts bearing the names of both named tenants, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*. The line remained open while the phone system was monitored for 10 minutes and the only participants who joined the conference call hearing were the applicant landlords.

All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the landlords established a monetary claim as against the tenants for unpaid rent or utilities?

Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Background and Evidence

The first landlord testified that this month-to-month tenancy began on September 1, 2012 and ended on November 30, 2012. Rent in the amount of \$1,100.00 per month was payable in advance on the 1st day of each month. A copy of the tenancy agreement has been provided which is dated September 2, 2012 and is signed by both landlords but not by either tenant. The agreement states that a security deposit of \$550.00 and a pet damage deposit in the amount of \$275.00 are required, however the landlord testified that the tenants didn't pay either of the deposits.

The tenants had stopped payment on the rent cheque for the month of December, 2012 and a copy of that cheque has been provided, which shows that a cheque in the amount of \$1,100.00 dated December 1, 2012 and marked "December Rent" was stopped on December 7, 2012. Also provided is a letter addressed to one of the landlords dated December 11, 2012 from the financial institution advising of the stopped payment and that a charge of \$7.50 was also applied to the landlord's account.

The other landlord testified that one of the tenants had sent a text message to the landlord indicating that the tenants were moving out of the rental unit. A large string of text messages between the parties has been provided. The first is dated November 21, 2012 from the tenant stating that the tenants will be paying rent for December and would move out after that. Another text message from the tenant dated November 23, 2012 indicates a hope to be out on the 30th and the suite would be available for re-renting December 1, and asks what the landlords would expect for rent. The landlord responded the same day saying that under the *Residential Tenancy Act* the tenants are required to give a full month's notice and they are required to pay rent for the entire month of December unless new tenants were found mid-month or sooner.

The landlord also testified that advertisements were placed on Kijiji, a free on-line advertising website, and on Castanet, which is a local news website, both during the last week of November.

The landlords had difficulty locating the tenants to serve them with the application and notice of hearing, and were required to conduct a search through a search company and provided a copy of an invoice in the amount of \$13.00. Also provided are 2 receipts from Staples, one in the amount of \$6.36 and the other \$5.68 which the landlord testified were for preparation of documents for this hearing.

The landlords claim one month of rent in the amount of \$1,100.00, \$7.50 for the stopped payment on the December rent cheque, \$50.00 for recovery of the filing fee for the cost of this application, \$13.00 for the search fee, and \$12.04 for the cost of preparation.

Analysis

Firstly, with respect to the tenancy agreement which is not signed by either tenant, the *Residential Tenancy Act* states that a tenancy agreement exists even if not in writing by virtue of the payment of rent. I am satisfied that a tenancy agreement existed as evidenced by the rent cheque for December 2012 that the tenant stopped payment on.

The *Act* requires a tenant to give notice to vacate a rental unit not less than one month before vacating, and if rent is payable on the 1st day of each month, that notice must be given before the 1st day of the month in order to be effective at the end of the following month. In this case, the landlord testified that rent is payable on the 1st day of each month. The landlords have also provided evidence that the tenants stopped payment of the rent cheque for December, 2012, and copies of text messages as evidence that the tenants did not provide the notice required, and I find that the landlords are entitled to a monetary order for unpaid rent in the amount of \$1,100.00 and recovery of the \$7.50 fee charged by the financial institution for the stopped payment.

With respect to the costs for preparation for this hearing and costs associated with searching for the tenants, the *Act* states that recovery of a filing fee is permitted, and the regulations state that a landlord may charge a non-refundable fee for charges by a financial institution but neither the *Act* nor the regulations permit recovery of costs associated with preparing for a hearing or a search fee.

Since the landlords have been partially successful with the application, the landlords are entitled to recovery of \$50.00 filing fee for the cost of filing the application.

In summary, I find that the landlords have established a monetary claim as against the tenants, jointly and severally in the amounts of \$1,100.00 for unpaid rent, \$7.50 for the stopped payment fee, and \$50.00 for recovery of the filing fee. The landlords' application for recovery of costs associated with preparation for this hearing and the search fee are hereby dismissed.

Conclusion

For the reasons set out above, I hereby grant a monetary order in favour of the landlords pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,157.50.

This order is final and binding on the parties and may be enforced.

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 21, 2013

Residential Tenancy Branch

