



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, 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. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the amended application for dispute resolution and notice of hearing by registered mail in accordance with Section 89 of the Act. The Tenant did not attend the hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Issue(s) to be Decided

The tenancy started on December 1, 2012 for a fixed term to November 30, 2013. The Tenant vacated the unit on February 27, 2013 pursuant the Landlord’s issuance of a 10 day notice for unpaid rent with an effective date of February 27, 2013. Rent of \$825.00 was payable monthly and at the outset of the tenancy the Landlord collected \$412.50 as a security deposit. The Tenant only paid \$100.00 towards rent for February 2013. The Landlord claims \$725.00

The tenancy agreement provides for a sum of \$300.00 as liquidated damages as an agreed pre-estimate of the costs of re-renting the unit. The Landlord claims \$300.00.

The Landlord rented the unit again for March 1, 2013 but at a reduced rent of \$800.00. The Landlord claims lost rental income of \$225.00 (\$25.00 x 9 months remaining on the fixed term).

The Tenant failed to pay utilities owing during the tenancy and the Landlord claims \$65.90 for hydro.

Analysis

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. Based on the Landlord's undisputed evidence, I find that the Landlord has substantiated a monetary entitlement for unpaid rent for February 2012 in the amount of **\$725.00**.

The Landlord has claimed loss of rental revenue and liquidated damages for the Tenant's breach of the fixed term. Where a tenancy agreement provides for liquidated damages, the Landlord has two choices: claim the liquidated damages thereby ending the contract or treat the contract as continuing, in which case the obligations under the contract (such as payment of rent) would continue as well. Given that the Landlord claimed both liquidated damage and lost rental income, I find that the double claim that must be rectified in favor of the Tenant and find that the Landlord is entitled to only the claim for lost rental income of **\$225.00**. I dismiss the claim for liquidated damages. Given the invoice for the utility and based on the undisputed evidence that this invoice was not paid by the Tenant, I find that the Landlord has substantiated an entitlement to **\$65.90**.

The Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,065.90**. Setting the security deposit of **\$412.50** plus zero off the entitlement leaves **\$653.40** owed by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$412.50 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$653.40**. 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: May 16, 2013

Residential Tenancy Branch

