



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for a Monetary Order for unpaid rent; and to recover the filing fee from the tenant for the cost of this application.

The tenant and landlord attended the conference call hearing, gave sworn testimony. The landlord did not provide documentary evidence for this hearing and the hearing was conducted by verbal testimony only.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agree that the tenant has lived in the home for a number of years as it was the tenant's family home; however the landlord purchased the home in a tax sale and became owner and landlord in early November 2012. The parties also agree that the rent for this house was \$350.00 per month due on the first of the month.

The landlord testifies that when he viewed the property the landlord decided the home required extensive renovations before the landlord could move into the property. The landlord testifies that he served the tenant with a 2 Month Notice to End Tenancy for

landlord's Use of the Property, on November 30, 2012, with an effective move-out date of January 31, 2013. This Notice notified the tenant that the tenant had 15 days to file an application to dispute the Notice.

The landlord testifies that he agreed to pay the tenant compensation equal to two month's rent and the landlord informed the tenant he did not have to pay rent in December 2012, or January 2013 and the tenant must vacate the rental unit on January 31, 2013. The landlord testifies that despite this, the tenant failed to move out by January 31, 2013.

The landlord testifies that the tenant failed to pay rent for February and March and vacated the rental unit on March 24, 2013. The landlord testifies that a previous hearing was held concerning the landlords request for an Order of Possession. At that hearing the landlord was granted leave to reapply for a Monetary Order to recover unpaid rent as the landlord had not provided sufficient evidence that the tenant had been served correctly with the landlords amended application to include a Monetary Order.

The landlord seeks to recover unpaid rent for February and March, 2013 of \$700.00. The landlord also requests to recover one of the two months paid in compensation as the landlord states he was only required to give the tenant one month's compensation due to the Two Month Notice. The landlords claim consists of \$1,050.00. The landlord also seeks to recover the \$50.00 filing fee from the tenant.

The tenant does not dispute the landlords claim that the tenant was served a Two Month Notice to End Tenancy which was effective on January 31, 2013. The tenant does not dispute that the landlord gave the tenant compensation due to the Notice and agreed the tenant did not have to pay rent for December, 2012 and January, 2013. The tenant agrees that he did not move out as required on January 31, 2013 and remained in the unit without paying rent until March 24, 2013. The tenant states he does not dispute the landlords claim for February and March rent however the landlord agreed the tenant did not have to pay rent for December and January.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

With regard to the landlords claim to recover one of the two months compensation from the tenant; If the parties had agreed that the tenant did not have to pay rent for two month then a landlord is not entitled to try to recover one of those months back now the tenancy has ended. I agree that the landlord only had to pay the tenant compensation equivalent to one month's rent but if another agreement has been entered into then that agreement is binding between the parties. Therefore, this section of the landlord's claim is dismissed without leave to reapply.

With regard to the landlords claim to recover unpaid rent for February and March, 2013; If a tenant does not dispute the Notice then a tenant is deemed to be overholding at the rental unit if the tenant continues to live in the unit past the effective date of the Notice. I refer the parties to the Residential Tenancy Policy Guidelines #3 which, in part, gives some guidance as to the landlord's rights if a tenant overholds at a rental unit after the tenancy is deemed to be over:

Section 44 of the Residential Tenancy Act set out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to these provision, however if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a per diem basis until the landlord recovers possession of the premises.

With this in mind I find the tenancy ended on January 31, 2013 and the tenant overheld at the rental unit for February and until March 24, 2013. As there was no loss of rental income for the landlord has the landlord intended to renovate the property I find the landlord is entitled to recover occupation rent for February of **\$350.00** and occupation rent on a per diem basis from March 01 to March 24 of **\$270.96**.

As the landlord has been partially successful with this claim I find the landlord is also entitled to recover the **\$50.00** filing fee from the tenant pursuant to s. 72(1) of the Act.

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$670.96** pursuant to s. 67 of the Act. The order must be served on the respondent and is enforceable through the Provincial Court 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: June 19, 2013

Residential Tenancy Branch

