



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 concerning an application made by the landlord for a monetary order for unpaid rent or utilities and to recover the filing fee from the tenant for the cost of the application. The details portion of the application claims unpaid rent less deposits held in trust by the landlord.

The landlord and the tenant both attended the conference call hearing, and both were represented by an agent. The landlord's agent and the tenant gave affirmed testimony and the parties provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The landlord did not testify. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Has the landlord established a monetary claim as against the tenant for unpaid rent or utilities?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on October 1, 2012 and was to expire on September 30, 2013 but the tenant abandoned the rental unit prior to December 25, 2012. Rent in the amount of \$1,300.00 per month was payable in advance on the 1st day of each month. At the outset of the tenancy the landlord collected a security deposit in the amount of \$650.00 and on November 2, 2012 the landlord collected a pet damage deposit from the tenant in the amount of \$325.00. Both deposits are still held in trust by the landlord. A copy of the tenancy agreement was provided for this hearing which confirms the testimony.

The landlord's agent also testified that the tenant left the rental unit without notice, but emailed the landlord explaining a difficulty in paying the rent in mid-December, 2012 and offering the deposits to the landlord. The landlord denied that request. On December 27, 2012 the landlord attended to give a gift to the tenant's child and found that the tenant had moved out. The tenant has not provided the landlord with a forwarding address in writing.

The landlord and tenant had been conversing by email and the tenant advised that the tenant could not continue to afford the rent, so the landlord advertised the rental unit for rent. Copies of advertisements were provided dated December 17, 2012 and January 3, 2013 on Kijiji for \$1,300.00 per month and January 4, 2013 on Craigslist for \$1,300.00 per month. The landlord also advertised in the local newspaper on January 13, 2013 for \$1,295.00 per month and provided a copy of that advertisement. The landlord also held an open house on January 6, 2013, but during mid-winter it was difficult to find a tenant and there was little interest in the advertisements. The rental unit was re-rented for March 1, 2013, and the landlord claims 2 month's rent for January and February, 2013.

The tenant testified the landlord was notified that the sale of the tenant's condominium in the tenant's previous city fell through but the tenant would do the best to honour the tenancy agreement. The condominium did not sell despite spending money to stage it and listing it with a second realtor. The tenant told the landlord that it may be necessary to claim bankruptcy, and the tenant gave the landlord notice to end the tenancy in an email on December 17, 2012. The landlord was offered the deposits in lieu of rent but the landlord did not respond, and since the landlord was silent with respect to that, the tenant believed the landlord was in agreement. Further, since the landlord started advertising the rental unit on December 17, 2013, the landlord obviously accepted the tenant's notice.

The tenant also asked the landlord to complete an inspection, but the landlord wasn't available until January 30, 2013 and the tenant couldn't wait that long.

The tenant also testified that the rental unit was not ready to move into at the commencement of the tenancy as negotiated.

Analysis

I have reviewed the tenancy agreement, and I find that the tenant ended the tenancy prior to the end of the fixed term. I have also reviewed the emails, and it's clear that the parties had some conversations with respect to rent payments. However, the *Residential Tenancy Act* permits a tenant to give one month's written notice to end a periodic tenancy so long as that notice is given prior to the date rent is payable under

the tenancy agreement. A tenant may end a fixed term tenancy the same way, but not before the expiry date of the fixed term.

In this case, I find that the fixed term was set to expire on September 30, 2013 but the tenant, having signed a contract with the landlord, failed to satisfy the contract by moving out of the rental unit prior to that. I find that the landlord has established that reasonable efforts to re-rent the rental unit were made, and the tenant is bound by the tenancy agreement until the rental unit re-rented, which was on March 1, 2013. Therefore, I find that the landlord has established a monetary claim as against the tenant for rent for January and February, 2013 totalling \$2,600.00.

Since the landlord has been successful with the claim, the landlord is also entitled to recovery of the \$50.00 filing fee for the cost of this application.

The landlord's application claims \$2,600.00 less the \$975.00 security deposit and pet damage deposit, and I take that as an application to keep the security deposit and the pet damage deposit in partial satisfaction of the claim. I find it prudent to deal with the deposits and I deduct \$975.00 from the landlord's award.

With respect to the tenant's testimony that the rental unit was not ready for occupation as negotiated in October, 2012, I have no application before me from the tenant and find that testimony to be irrelevant to this hearing.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit and pet damage deposit and I grant a monetary order in favour of the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,675.00.

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: June 17, 2013

Residential Tenancy Branch