



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was scheduled to deal with the landlord's application for a Monetary Order for unpaid and/or loss of rent and late fees. The tenant did not appear at the hearing. The landlord submitted a statement from the former manager indicating the tenant was personally served with the hearing documents on April 18, 2013. I accepted that the tenant has been sufficiently served with notification of this proceeding and I continued to hear from the landlord without the tenant present.

Issue(s) to be Decided

Is the landlord entitled to recover the amounts claimed against the tenant for unpaid and/or loss of rent and late fees for the months of March, April and May 2013?

Background and Evidence

The month to month tenancy commenced on May 1, 2012 and the tenant was required to pay rent of \$810.00 on the 1st day of every month. On February 19, 2013 the landlord was provided an Order of Possession and a Monetary Order for unpaid rent up to and including the month of February 2013.

The landlord testified that the tenant did not comply with the Order of Possession until May 18, 2013 when he vacated the rental unit. By way of this application the landlord is seeking to recover unpaid and/or loss of rent, plus late fees, for the months of March, April and May 2013.

In the details of dispute the landlord indicates the amount owed for the above period is \$1,990.00 less a \$500.00 payment received for use and occupancy; however, during the hearing the landlord stated the \$500.00 payment was already reflected in the \$1,990.00 and was inadvertently double counted. The landlord confirmed that the only \$500.00 payment was received March 12, 2013 and pointed to the ledger that reflects

this payment. The landlord requested the Application be amended to correct the mathematical error.

As documentary evidence for this proceeding, the landlord provided copies of: the tenancy agreement; the tenant's ledger; the Order of Possession and Monetary Order issued February 19, 2013; and, the statement of the former manager with respect to service of the hearing documents.

Analysis

Upon consideration of everything presented to me, I am satisfied the tenant was ordered to vacate the rental unit in February 2013 and did not comply with this Order until May 2013. The tenant's refusal to comply with the Order caused the landlord to incur loss of rent for the months of March, April and May 2013. Therefore, I grant the landlord's request to recover loss of rent from the tenant for those amounts.

Based upon the ledger presented to me, I accept the landlord's submission that a mathematical error was made in the details of dispute and the tenant made only one \$500.00 payment for use and occupancy which was reflected in the ledger on March 12, 2013. Therefore, I offset this one \$500.00 payment against the three months of rent awarded to the landlord above.

I deny the landlord's request to recover late fees from the tenant for the months of March, April, and May 2013 as this claim relates to loss of revenue rather than a breach of the tenancy agreement. Late fees may only be charged where the tenancy agreement provides for such and in this case the tenancy came to an end prior to March 2013. Therefore, I find the landlord is not entitled to late fees for March, April and May 2013.

I award the landlord the filing fee paid for this Application.

In light of the above, I provide the landlord with a Monetary Order calculated as follows:

Loss of rent: March, April, May 2013	\$ 2,430.00
Less: payment recorded in ledger March 12, 2013	(500.00)
Plus: filing fee paid for this Application	<u>50.00</u>
Monetary Order	\$1,980.00

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court Small Claim to enforce as an Order of that court.

Conclusion

The landlord has been provided a Monetary Order in the amount of \$1,980.00 for loss of rent for the months of March, April and May 2013.

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: July 10, 2013

Residential Tenancy Branch

