



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNDC, FF

Introduction

This hearing was scheduled to deal with a landlord's application for a Monetary Order for unpaid rent, damage to the unit, and damage or loss under the Act, regulations or tenancy agreement. The landlord named three tenants in filing this Application. None of the named tenants appeared at the hearing.

Preliminary and Procedural Matters

The landlord provided evidence that three hearing packages were sent to the tenants via registered mail at the forwarding address provided by the tenants in early February 2013. One of the named tenants received and signed for the registered mail on June 24, 2013 (referred to by initials DP). The other two registered mail packages were returned to the landlord. Based upon the above, I am satisfied DP was served with the landlord's hearing package.

In mid-June 2013, the landlord received a registered letter from one of the tenants (referred to by initials AP) seeking to collect upon a Monetary Order issued to the tenants May 22, 2013. The tenant provided a different service address in the correspondence sent to the landlord in June 2013. In response, on July 5, 2013, the landlord sent two copies of the landlord's hearing package to the new address provided to the landlord by AP. Tracking information shows that the registered mail was refused by the recipients on July 9, 2013.

The landlord testified that AP contacted the landlord in response to the landlord's claims. I also note that the tenant AP served evidence upon the Branch with respect to the landlord's Application for Dispute Resolution.

Section 89(1) provides that an Application for a monetary order must be served using certain methods. A landlord may serve a tenant by registered mail sent to the tenant's forwarding address or address of residence. Section 90 of the Act provides that

documents mailed to the other party are deemed to be received five days after mailing so that a party cannot avoid service by refusing to accept or pick up the registered mail. Based upon the above, I find I am satisfied that AP has received and been served with the landlord's Application for Dispute Resolution. Accordingly, I continued to hear from the landlord in the absence of the tenants.

I find there is insufficient evidence to conclude the third tenant has been sufficiently served or has knowledge of the landlord's claims so I have excluded the third tenant from this decision.

The landlord reduced her monetary claim to exclude utilities and damages previously sought. Therefore, the only remaining issue is whether the landlord is entitled to recover unpaid and/or loss of rent from the tenants.

Issue(s) to be Decided

Is the landlord entitled to recover unpaid and/or loss of rent from the tenants?

Background and Evidence

The parties entered into a tenancy agreement in March 2012 for a fixed term set to expire March 31, 2013. The monthly rent of \$1,350.00 was due on the 1st day of every month. The tenants returned vacant possession of the rental unit to the landlord on February 2, 2013.

The landlord testified that in January 2013 the tenant gave the landlord verbal notice of their intent to end the tenancy at the end of January 2013. I note that the decision issued on May 22, 2013 for the previous dispute hearing indicates the tenant gave the landlord written notice to end tenancy on December 20, 2012.

In the written submissions of both parties, there is an indication the landlord sought the tenants' cooperation in re-renting the unit so as to mitigate loss of rent. In written submissions of both parties there is evidence the landlord received \$375.00 from the Ministry on behalf of DP for rent for the month of February 2013. The landlord submitted, however, that this payment was applied to outstanding utilities.

The landlord included evidence showing advertisements for the rental unit as early as January 13, 2013 which continued into March 2013. The landlord submitted that the unit was re-rented in April 2013.

The landlord is seeking to recover unpaid and/or loss of rent from the tenants for the months of February and March 2013 in the sum of \$2,700.00.

The security deposit has already been disposed of by way of a Monetary Order issued May 22, 2013 in favour of the tenants.

Analysis

Based upon the evidence provided for this hearing, and the decision issued May 22, 2013 for the previous dispute hearing, I am satisfied the parties had a fixed term tenancy in place with an expiry date of March 31, 2013.

Under the Act, a tenant is obligated to fulfill the duration of the fixed term and if the tenant ends the tenancy before the expiry of the fixed term the tenant may be held responsible for loss of rent for the remainder of the fixed term. A tenant may not end a fixed term tenancy earlier than the expiry date with written or verbal notice. The Act provides very specific and limited ways that a tenant may legally end a fixed term tenancy prior to the expiry date of the fixed term; however, I find I was not provided evidence that the tenants ended the fixed term tenancy early in a manner that would exempt the tenants from their obligations under the Act.

Where a tenant ends a tenancy early and the landlord makes a monetary claim against the tenant, the landlord has a burden to show that reasonable efforts were made to mitigate losses. Based upon the undisputed evidence before me, I find that I am satisfied the landlord began advertising the unit for rent in January 2013 and continued into March 2013 as a replacement tenant was secured starting in April 2013. Therefore, I am satisfied the landlord made reasonable efforts to mitigate losses.

Based upon the above, I grant the landlord's request to recover unpaid and/or loss of rent for the months of February and March 2013 from the tenants. However, since the landlord did not establish an entitlement to collect utilities from the tenants I have taken into account the \$375.00 payment received from the Ministry for "rent" for February 2013. I further award the landlord recovery of the \$50.00 filing fee paid for this Application. Therefore, the landlord is provided a Monetary Order in the total amount of \$2,375.00 [$\$2,700.00 - \$375.00 + \50.00] to serve upon the tenants and enforce as necessary.

Conclusion

The landlord had been provided a Monetary Order in the amount of \$2,375.00 to serve and enforce as necessary.

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: September 11, 2013

Residential Tenancy Branch

