



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, 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. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation – Section 67; and
4. 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 application for dispute resolution and notice of hearing by registered mail on July 25, 2013 in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

At the onset of the hearing, the Landlord asked to amend the application to reduce the claim for loss of revenue for August 2013 to \$375.00 to reflect a half month’s rent. As this amendment does not prejudice the Tenant, I amend the application to reduce the monetary claim accordingly. The Landlord also withdraws the request for an order of possession as the Landlord now has possession of the unit.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy began on May 1, 2013. Rent of \$750.00 is payable in advance on the first day of each month. No security deposit was collected from the Tenant. The Tenant failed to pay rent for July 2013 and on July 4, 2013 the Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice") by posting the Notice on the door. The Notice sets the effective date as July 15, 2013. The Tenant has not made an application for dispute resolution and has not paid the arrears. The Tenant vacated the unit on or before August 5, 2013 as this is the date the Landlord attended the unit and found the Tenant gone. No keys were returned to the Landlord. The Landlord claims unpaid July rent and \$375.00 loss of revenue for August 2013. The unit was advertised but the Landlord's agent cannot provide any other details.

Analysis

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement. Section 46 of the Act provides that a Landlord may end a tenancy if rent is unpaid by serving the tenant with a 10 day notice to end tenancy for unpaid rent. Rent is no longer payable after the effective date of the end of the tenancy, including tenancies that are ended by the Landlord. If however a tenant remains in the unit past the effective date of a notice to end tenancy, the landlord is entitled to a per diem amount for use and occupancy until the date that the landlord obtains possession of the unit. Section 37 of the Act provides that at the end of a tenancy a tenant must give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the Landlord's undisputed evidence that the Tenant failed to pay July 2013 rent, I find that the Landlord has substantiated an entitlement to **\$750.00** in unpaid rent. Although the Tenant may have vacated the unit prior to August 5, 2013, accepting the Landlord's undisputed evidence that the Tenant did not return the keys to the Landlord,

I find that the Landlord has established that the Tenant was in possession of the unit to August 5, 2013 and that the Landlord is entitled to use and occupancy rent to this date.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party, that reasonable steps were taken by the claiming party to minimize or mitigate the costs claimed, and that costs for the damage or loss have been incurred or established. Based on the Landlord's undisputed evidence, I find that the Tenant, by not providing the Landlord with the keys to the unit, would have reasonably prevented the Landlord from readying the unit for a following tenancy and as the Landlord has reduced its original claim, I find that the Landlord's claim for lost rental income is reasonable in the circumstances and that the Landlord is entitled to lost rental income to August 15, 2013.

Taking into account the Landlord's above entitlement for the first 5 days of August 2013, I calculate the Landlord's monetary entitlement for August 1 to August 15, 2013 to be **\$375.00**. As the Landlord's application has been successful, I find that the Landlord is entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$1,175.00**.

Conclusion

I grant the Landlord an order under Section 67 of the Act for **\$1,175.00**. 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: August 27, 2013

Residential Tenancy Branch