



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Realty Executives Vantage
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes FF, MNDC, MNR, MNSD, OPR

Introduction

This decision deals with two applications for dispute resolution, one brought by the tenant(s), and one brought by the landlord(s). Both files were heard together.

The tenant's application was a request to cancel a Notice to End Tenancy that was given for nonpayment of rent, and a request for repairs to the rental unit, however the tenants have subsequently vacated the rental unit and therefore a hearing on these matters is no longer required.

The landlord's application is a request for an Order of Possession based on a Notice to End Tenancy for nonpayment of rent, and a request for a Monetary Order for \$4750.00 and recovery of the \$50.00 filing fee; however as stated above the tenants have vacated and therefore an Order of Possession is no longer required.

A substantial amount of documentary evidence and written arguments has been submitted by the parties prior to the hearing. I have thoroughly reviewed all submissions.

I also gave the parties the opportunity to give their evidence orally and the parties were given the opportunity to ask questions of the other parties.

All testimony was taken under affirmation.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for \$4750.00 and recovery of the \$50.00 filing fee?

The landlord had also requested that we deal with a claim for damages and outstanding utilities, however the tenant has not been properly served with notice of the request to change the claim and therefore I will not deal with those issues and the landlord will have to deal with those issues through a separate application.

Background and Evidence

The landlord testified that:

- This tenancy began on September 1, 2012 with a monthly rent of \$1350.00.
- The tenant failed to pay any rent for the months of July 2013, August 2013, and September 2013.
- They also had an NSF charge for the month of June 2013.
- They do not know when the tenant vacated however they entered the rental unit on September 4, 2013 and found that it was vacant. No keys have been returned.
- They have not yet been able to re-rent the unit, because of the extremely poor condition in which the unit was left.
- They are therefore requesting a Monetary Order as follows:

July 2013 rent outstanding	\$1350.00
August 2013 rent outstanding	\$1350.00
September 2013 lost rental revenue	\$1350.00
June 2013 NSF charge	\$25.00
Filing fee	\$50.00
Total	\$4125.00

The tenant testified that:

- They did not pay the July 2013 rent or the August 2013 rent, and they vacated at the end of August 2013.
- The reason they vacated is because the landlord refused to do requested repairs.
- The furnace in the rental unit had a gas leak and when the servicemen was there he informed us that the furnace needed servicing however, when we asked the landlord to do so, he refused.
- The rental unit was also disgusting and the carpets needed to be replaced, as there had been feces on the carpets when they moved in.
- The carpets would not come clean and the landlord refused to replace them.
- Since the landlord refused to do the requested repairs they decided to vacate at the end of August 2013.

- They do not believe they should have to pay any of this claim due to the poor condition of the rental unit while they were living there.

In response to the tenant's claims the landlord testified:

- The rental unit was in need of significant cleaning at the beginning of the tenancy however they spent \$1025.58 to ensure that the rental unit was properly cleaned, and they even used the cleaning person that the tenants requested.
- At that time the tenants stated that the unit was cleaned to their satisfaction.
- The tenants were also given a \$250.00 credit off of the rent for time while the unit was being cleaned.
- The carpets were professionally cleaned and, at the time, the tenants also stated that they were cleaned to their satisfaction.
- They had no further complaints from the tenants throughout the whole tenancy until August of 2013, after the tenants failed to pay any rent for the month of July 2013 and August 2013.
- When the tenants vacated the rental unit they left the unit in an extremely dirty and cluttered condition and as a result they have been unable to re-rent the unit.
- They believe the tenants are simply making excuses as they had been unable to pay the rent.

Analysis

It's my decision that I allow the full amount claimed by the landlords for outstanding rent and late fees.

The tenant has admitted that they failed to pay the full rent for the months of July 2013, and August 2013 and therefore I allow that portion of the claim.

I also allow the claim for loss rental revenue for the month of September 2013; because it's my finding that the tenants did not leave the rental unit in rentable condition.

Further since the tenants did not inform the landlords that they had vacated the rental unit, and did not return the keys, the landlords were not even aware that the tenants had vacated until September 4, 2013. Therefore the possibility of renting the unit for September 1, 2013 had already passed.

I do not accept the tenants claims that they vacated because the landlord failed to deal with repair issues, I find it more likely that the landlord is correct that they were having difficulty paying the rent and therefore use the issue of repairs for an excuse to vacate

without paying rent. The tenant has supplied no evidence in support of the claim that the furnace needed servicing or that the carpet need replacing.

I also allow the landlords request for the NSF charge for the NSF check for the month of September 2013.

I also order recovery of the \$50.00 filing fee.

Conclusion

I have allowed the landlords full claim and I've issued a Monetary Order in the amount of \$4125.00.

The tenant's application is dismissed without leave to reapply.

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 20, 2013

Residential Tenancy Branch

