



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNDC, FF

Introduction

This hearing was set to deal with an application by the landlords for an order of possession and a monetary order. Although served with the Application for Dispute Resolution and Notice of Hearing by registered mail, the tenant did not appear.

The landlords had been granted an order of possession at an earlier hearing so this hearing related to the application for monetary order only.

Issue(s) to be Decided

Are the landlords entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed tenancy commenced June 1, 2013. The monthly rent of \$2900.00 was due on the first day of the month. The tenant was also to pay a security deposit of \$1500.00.

The tenant paid the first month's rent and security deposit by cheque. The cheque was drawn on a US bank and was for US\$4500.00. When it was deposited it went into the landlords' Canadian bank account at CAN\$4578.08.

The cheque was returned to the landlords with the notation "unable to locate account" and the sum of CAN\$4698.90 was withdrawn from the landlords' bank account, a loss of \$120.82 on the transaction.

The tenant never made the cheque good nor did he make any payment towards rent. The tenant moved out of the rental unit, in compliance with the order of possession, on August 15, 2013.

Since then the landlords have been advertising the unit for rent but have been unsuccessful in finding a new tenant. This rental unit is located in a resort community. The landlords have owned it for twelve years. In addition, they own and rent several other properties in the same community. Their experience is that September and October are the two most difficult months of the year to rent units in this community.

Analysis

The tenant is responsible for the rent to the end of the term of the tenancy agreement, subject to the landlords' statutory obligation to make all reasonable efforts to mitigate their damages. I find that the landlords have made reasonable efforts to mitigate their damages and I find the tenant is responsible for the June, July, August, and September rents and for the projected loss of rental income for October, a total amount of \$14,500.00.

I also find that the tenant is responsible for the loss suffered by the landlords when his cheque was not honoured, in the amount of \$120.82.

The tenancy agreement specifically provided for a late payment fee although the amount specified was more than the amount allowed by the *Residential Tenancy Regulation*. The *Regulation* limits the late payment fee that may be charged by a landlord to \$25.00. I find that the tenant is responsible for late payment fees for the months of June, July, August, and September in the amount of \$100.00. I have not awarded any late payment fee for October because that payment is not yet due.

As the landlords were successful on their application they are also entitled to reimbursement from the tenant for the \$100.00 fee they paid to file this application for dispute resolution.

In total, I find that the tenant must pay the landlords the sum of \$14,820.82 and pursuant to section 67 I grant the landlords a monetary order in this amount.

Conclusion

A monetary order in favour of the landlords has been made. It 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: September 18, 2013

Residential Tenancy Branch

