



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Century Club Suites
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, OPR, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession and a monetary order. Both parties were represented at the conference call hearing with the tenant L.E. appearing to represent both herself and the tenant J.R.

At the hearing, the landlord advised that the tenants had vacated the unit on or about August 31 and withdrew her claim for an order of possession. She also amended her claim to decrease the amount sought for loss of income for September from \$860.00 to \$430.00.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on November 1, 2012 at which time the tenants paid a \$430.00 security deposit and that monthly rent was set at \$860.00. They further agreed that the landlord was entitled to \$1,080.00 which represents \$180.00 in rental arrears for July 2013, \$860.00 in rental arrears for August 2013, \$20.00 for storage fees and a \$20.00 late payment fee.

The issue with which the parties didn't agree was whether the landlord was entitled to any loss of income for September. The parties agreed that on July 5, the tenants were served with a 10 day notice to end tenancy for unpaid rent and they did not dispute the notice or cancel it by paying the full amount of the arrears. They further agreed that at the beginning of August, the tenants told the landlord that they were going to try to collect the money required to pay the arrears so they could stay in the unit. The tenants testified that in mid-August, they told the building manager that they would be vacating

the unit at the end of August. The parties agreed that the landlord advertised the rental unit throughout August and showed the unit to prospective tenants during that month.

The landlord also seeks to recover the \$50.00 filing fee paid to bring her application.

Analysis

As L.E. agreed that the tenants owed \$1,080.00 for arrears and fees, I award the landlord \$1,080.00.

I find that the landlord is not entitled to recover lost income for the month of September. The landlord was showing the rental unit throughout August and there is no evidence before me showing that the landlord lost income because the tenants were overholding, but rather because none of the prospective tenants were interested in the unit. The 10 day notice to end tenancy effectively ended the tenancy on July 15 and the landlord chose to wait until the end of August to seek enforcement of the notice despite not having received rent for the month of August and further waited to enforce the notice until after she had word from the tenants that they would vacate the unit at the end of August. While the tenants took advantage of the landlord's delay by staying in the unit for an extra month, I am unable to find that they caused her to lose income in the month of September and I dismiss that part of the landlord's claim.

As the landlord has been substantially successful in her claim, I find that she should recover the \$50.00 filing fee paid to bring this application and I award her that sum.

Conclusion

The landlord has established a claim for \$1,130.00. At the hearing, the landlord asked that the security deposit be applied to the award and I find it appropriate to do so. I order the landlord to retain the \$430.00 security deposit in partial satisfaction of the claim and I grant her a monetary order under section 67 for the balance of \$700.00. This order may be filed in the Small Claims Division of the Provincial 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: October 09, 2013

Residential Tenancy Branch

