



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, 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. An Order to retain the security deposit - Section 38; 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 this application for dispute resolution and notice of hearing in person on October 16, 2013 in accordance with Section 89 of the Act. The Landlord amended the application on October 30, 2013 and I accept the Landlord’s evidence that the Tenant was served in person with the amended application on October 30, 2013. 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

The Landlord withdraws the claim for damages to the unit, states that the Tenant moved out of the unit on October 30, 2013 and that the unit has been rented for December 1, 2013. As the Landlord has possession of the unit, I dismiss the claim for an order of Possession.

Issue(s) to be Decided

Is the notice to end tenancy valid?

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on April 1, 2013 and ended on October 30, 2013. Rent of \$980.00 is payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected \$490.00 as a security deposit from the Tenant. On September 30, 2013 the Tenant gave notice to end the tenancy on or before October 19, 2013 and informed the Landlord that rent for October 2013 would not be paid. On October 2, 2013 the Landlord personally served the Tenant with a 10 notice to end tenancy for unpaid rent (the "Notice"). The effective date of the Notice is set out as October 12, 2013. The Tenant has not made an application for dispute resolution and has not paid October 2013 rent. The tenancy agreement provides for a late rent fee of \$50.00.

The Landlord states that the unit was advertised at the end of October 2013. The Landlord claims unpaid rent for October 2013 and lost rental income for November 2013 and late fees of \$25.00 for both months.

Analysis

Section 46 of the Act requires that upon receipt of a 10 notice to end tenancy for unpaid rent (the "Notice") the tenant must, within five days, either pay the full amount of the arrears indicated on the Notice or dispute the notice by filing an application for dispute resolution with the Residential Tenancy Branch. If the tenant does neither of these two things, the tenant is conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. Where a landlord ends a tenancy, no further rent is payable unless the tenant over holds the unit and then the landlord is entitled to over holding rent to the date that the Tenant moves out of the unit. Based on the Landlord's evidence I find that the Tenant was served with a Notice with an effective move-out date of October 12, 2013 and that the Tenant remained in the unit until October 30, 2013. I

find therefore that the Landlord has substantiated an entitlement to **\$980.00** for October 2013 rent.

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. As the Landlord ended the tenancy and considering that the Landlord did not advertise the unit until the Tenant moved out of the unit, I find that the Landlord has not substantiated that the Tenant caused a loss of rental income for November 2013 and I therefore dismiss the claim for lost rental income for November 2013.

Section 7 of the Residential Tenancy Regulations provides that a landlord may charge a late rent payment fee of no more than \$25.00 where such provision is contained in the tenancy agreement. Section 6 of the Act provides that a term of a tenancy agreement is not enforceable if the term is inconsistent with this Act or the regulations. Section 5 of the Act provides that parties may not contract out of the Act or Regulations and that any attempt to do so is of no effect. As the tenancy agreement contains a provision for a \$50.00 late fee and as this is not consistent with the Regulation, I find that this provision is not enforceable and is of no effect. As there is no other provision in the tenancy agreement in relation to a late rent fee, I find that the Landlord has not substantiated that the Tenant is obligated to pay a late fee and I dismiss this claim.

The Landlord is entitled to recovery of the \$50.00 filing fee for a total monetary amount of **\$1,030.00**. Setting the security deposit of \$490.00 plus zero interest off the entitlement leaves **\$540.00** owed by the Tenant to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$490.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$540.00**. 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: November 29, 2013