



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, MNDC, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover unpaid rent and loss of revenue and inclusive of recovery of the filing fee associated with this application, and an order to retain the security deposit in partial satisfaction of the monetary claim.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord provided the tracking information for the registered mail and testified that the tracking record indicates the registered mail was received September 26, 2013. The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue due to the tenant's non-compliance with the Act, regulations or tenancy agreement?

Background and Evidence

The following is undisputed. The parties completed an Application to rent on August 06, 2013 in person. The parties then communicated by e-mail that the tenancy would start September 01, 2013, and on August 10, 2013 the tenant forwarded the security deposit of \$512.50 by electronic transfer for which the landlord provided evidence of same. The landlord attempted to enter into a written tenancy agreement before September 01, 2013, however it appeared the tenant was out of town and a tenancy agreement was not signed. At about noon on September 01, 2013 the tenant informed the landlord by e-mail they would not be occupying the unit. Despite that the tenant's notice was not in

writing and was provided 1 day later than prescribed as legal Notice to End the tenancy under the Act, the landlord claims they accepted the tenant's e-mail as *late* Notice to End the tenancy October 31, 2013. In that respect the landlord began advertising for a new tenant on September 03, 2013 to potentially mitigate losses, as a landlord is required to do according to Section 7(2) of the Act. The landlord testified their course of advertising on September 03, 2013 would not have differed had the landlord accepted receipt of the tenant's Notice to End by e-mail the previous day. The landlord provided evidence of their attempts to rent the unit, which the landlord was successful in doing for November 01, 2013.

The landlord seeks loss of revenue for the period of September and October 2013 in the amount of \$1810.85 – having stated to the tenant that rent for September would be compromised at \$785.85.

Analysis

Based on the undisputed testimony of the landlord and on the preponderance of the evidence before me, I find sufficient evidence of a tenancy agreement and that the parties agreed to start a tenancy September 01, 2013. I accept the landlord's evidence they accepted the tenant's e-mail notification to end the tenancy as valid Notice - albeit late. I find that while the Act requires tenants to give one full month's notice that they are vacating, the Act does not attach a penalty for failing to do so or automatically entitle the landlord to compensation. There is no provision in the Act whereby tenants who fail to give adequate notice will be automatically held liable for loss of income for the month following the month in which they give their notice – in this case, October 2013. However, Section 7 of the Act provides as follows:

7. Liability for not complying with this Act or a tenancy agreement

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

In this case, the landlord may have made reasonable efforts to minimize their losses by advertising the rental unit starting September 03, 2013, thereby meeting the second part of the test established in section 7(2). However, the landlord failed to meet the first part of the test established in section 7(1) in that they did not prove on the balance of probabilities that their loss of Revenue for October 2013 resulted from the tenant's failure to comply with the Act. Rather, the landlord testified that they would not have

done anything different to avert their losses for October 2013 had they received the tenant's Notice 1 day earlier in compliance with the Act. It is clear the landlord is entitled to unpaid rent for September 2013 for which the landlord has provided sufficient evidence of mitigation; however, the landlord has not proven on balance of probabilities that the tenant's non-compliance with the Act - by submitting their Notice to End one day late - resulted in loss of revenue for an additional month. As a result, the portion of the landlord's claim for loss of revenue for October 2013 is **dismissed**, without leave to reapply. The landlord is, however, entitled to loss of revenue for September 2013 in the amount payable under the tenancy agreement of \$1025.00. The landlord is also entitled to recover their filing fee of \$50.00 for a total entitlement of **\$1075.00**. The security deposit will be off-set from the award made herein.

Calculation for Monetary Order

| | |
|--|-----------------|
| Loss of revenue for September 2013 | \$1025.00 |
| Filing Fees for the cost of this application | 50.00 |
| <i>Less Security Deposit</i> | <i>-512.50</i> |
| Total Monetary Award | \$562.50 |

Conclusion

I Order that the landlord retain the security deposit of \$512.50 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$562.50**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: December 16, 2013

Residential Tenancy Branch