



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DAVID BURR LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR OPR MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67;
- c) An Order to retain the security deposit pursuant to Section 38; and
- d) An order to recover the filing fee pursuant to Section 72.

SERVICE:

The tenant did not attend. The landlord provided evidence that the Application for Dispute Resolution was served by registered mail. It was verified online that delivery was attempted and notice was left several times from October 8, 2013 but it was returned to the sender after the tenant failed to claim it by October 25, 2013. I find that the tenant is deemed to be served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that the tenant owes rent and damages caused by him breaking a fixed term lease and the costs incurred? Is the landlord entitled to recover the filing fee?

Background and Evidence:

The tenant did not attend. The landlord was given opportunity to be heard, to present evidence and to make submissions. The undisputed evidence is that the tenancy commenced in 2010, a security deposit of \$550 was paid and rent was currently \$1 100 a month. It is undisputed that the current lease was a fixed term lease commencing September 1, 2012 and expiring August 31, 2013. The landlord said the tenant gave one month notice to vacate and vacated in January 2013. The landlord was unable to re-rent until March 2013 and then only at a lower rent, \$900 a month.

The landlord is claiming as follows:

\$1100 lost rent for February 2013

\$1200 lost rent from March to August 1, 2013 (\$200 x 6 months)

\$1100 liquidated damages

\$372.91 advertising costs

The landlord requests to retain the security deposit to offset the amount owing and to recover the filing fee. The tenant did not submit any documents or attend the hearing to dispute the amount owing.

On questioning, the landlord said that the \$372.91 represented their total costs to re-rent; there were no further administrative costs.

On the basis of the documentary and solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis

Monetary Order:

The onus of proof is on the landlord to prove the amounts owing. I find the landlord satisfied the onus in proving that \$1100 is owed for outstanding rent for February 2013; the evidence is supported by the fixed term lease in evidence. I find the tenant is responsible under the lease for rent of \$1100 a month to the end of the fixed term. I find the landlord mitigated the damages as is his duty by assiduously trying to re-rent as soon as possible. However, after a number of showings and negotiations, they had to re-rent at the reduced rent of \$900 as of March 1, 2013. I find the landlord entitled to recover \$1200 in further lost rent to August 31, 2013, the end of the fixed term lease. I find the landlord entitled to recover his costs of advertising to re-rent in the amount of \$372.91 as proved by invoices in evidence.

As explained to the landlord in the hearing, they are entitled to be put in the same monetary position as if the tenant had not breached the lease so they are entitled to losses actually suffered; in the alternative, they are entitled to treat the lease at an end and claim liquidated damages. The landlord claims their actual losses plus liquidated damages. The lease agreement in file states that \$1100 will be claimed in the event of a breach but that this is not a penalty but a genuine pre-estimate of their costs. I find the weight of the evidence is that the landlord had no further costs other than the lost rent and advertising. Therefore I find them not entitled to liquidated damages as these would be in the nature of a penalty (see Residential Policy Guideline #4)

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Lost rent Feb. 2013	1100.00
Lost revenue March-August 31, 2013 (6 x \$200)	1200.00
Advertising costs	372.91
Filing fee	50.00
Less security deposit (no interest 2010-13)	-550.00
Monetary Order to Landlord	2172.91

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 17, 2013

Residential Tenancy Branch

