



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding FirstService Residential
and [tenant name suppressed to protect privacy]

DECISION

Dispute codes OP MNR MNSD FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order allowing retention of the security deposit in partial satisfaction of the claim. Although served with the Application for Dispute Resolution and Notice of Hearing by posting on the door of the rental unit the tenants did not appear. Further, although the Application was not served in accordance with Section 89 of the Act, I am satisfied based on the testimony of the landlord that receipt of the documents was confirmed verbally with the tenants, that the Application and Notice of Hearing were sufficiently given to the tenants for the purposes of the Act.

At the outset of the hearing the landlord advised that an order of possession was no longer necessary because the tenants had already vacated the rental unit.

Issues

Is the landlord entitled to the requested orders?

Background and Evidence

This tenancy began on January 1, 2008. The rent was \$1266.75 due in advance on the first day of each month. A security deposit of \$525 was paid at the start of the tenancy. On November 6, 2013 the tenants were served with a Notice to End Tenancy for non-payment of rent. The tenants did not pay the outstanding rent, did not dispute the Notice and moved out of the rental unit on December 15, 2013.

The landlord claims that the amount of rent outstanding at the time the tenants vacated was \$2533.50 being the rent for November and December. The landlord also claims loss of income for the month of January in the amount of \$1266.75. In terms of its duty to mitigate, the landlord testified that the suite has been shown at least 7 times and that so far they have not been able to rent the unit to new tenants.

The landlord also claims that the tenants gave them cheques for the months of November and December and that both of them were returned due to non-sufficient funds. In this regard the landlord points out that the tenancy agreement provides for an administrative fee of \$25.00 for any returned cheques.

Analysis

Unpaid Rent (\$2533.50) - The landlord has claimed unpaid rent in the total amount of \$2,533.50. This claim is made with respect to the months of November and December. I find that the landlord has established this portion of the claim on the basis that the tenant is required under the tenancy agreement and the Act to pay the rent when it is due.

Lost Income (\$1266.75) – The landlord has claimed \$1266.75 in lost income for January on the basis that the tenant remained in the unit until December 15 which amounts to less than one month's Notice. In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice given by the tenant during the month would not end the tenancy until the end of the next month. Clearly the landlord is still subject to the duty to mitigate its losses and in the present case I find that the landlord has made reasonable efforts to re-rent the unit. I am therefore satisfied that the landlord has established this portion of its claim.

NSF Fees (\$50) – The landlord has claimed \$25 in respect of each of the cheques issued by the tenants for the months of November and December. Both cheques bounced due to non-sufficient funds. The tenancy agreement provides that \$25 fee will be charged in such events. I am therefore satisfied that the landlord has established this portion of its claim.

Filing fee (\$50) – Based on the outcome herein, I find that the landlord is entitled to recover the cost of this application from the tenants.

Conclusion

I find that the landlord has established a total monetary claim of \$3900.25 comprised of the amounts specified above. I therefore order that the landlord retain the deposit and interest of \$532.88 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$3367.37. 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: January 14, 2014

Residential Tenancy Branch

