



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 by way of conference call in response to an application made by the landlord for an Order of Possession and a Monetary Order for unpaid rent or utilities. The landlord also applied to keep all or part of the pet damage or security deposit and to recover the filing fee from the tenants for the cost of the application.

The landlord's agent personally served each tenant with a copy of the application and Notice of Hearing documents with a witness. Based on this, and in the absence of any evidence from the tenants to contradict this, I find that the tenants were served the hearing documents by the landlord as required by the *Residential Tenancy Act* (referred to in this decision as the 'Act').

An agent for the landlord appeared for the hearing. There was no appearance for the tenants or any submission of documentary evidence prior to the hearing, despite being served notice of the hearing in accordance with the Act. The landlord's agent's affirmed testimony and documentary evidence was carefully considered in this decision.

At the start of the hearing the landlord withdrew the portion of the application relating to a request for an Order of Possession as the tenant had abandoned the rental suite.

Issue(s) to be Decided

- Is the landlord entitled to unpaid rent for October, November and December, 2013?
- Is the landlord entitled to late fees for unpaid rent?
- Is the landlord entitled to keep all or part of the security deposit in partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that the tenancy was due to start on December 1, 2012 for a fixed term of one year ending on November 30, 2013. However, the tenants were allowed to move in on November 23, 2012. The landlord and tenant signed a written tenancy agreement and the landlord collected a security deposit from the tenants in the amount of \$362.50 on November 23, 2013. Rent in the amount of \$725.00 was payable by the tenants on the first day of each month.

The landlord's agent testified that the tenants failed to pay full rent in October, 2013 leaving an outstanding balance of \$36.98. On November 1, 2013, the tenants failed to pay full rent in the amount of \$725.00. As a result, the landlord's agent served the tenants with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 2, 2013. The notice shows an expected date of vacancy of November 13, 2013, for a total amount of \$761.98 of unpaid rent due on November 1, 2013.

The landlord had also claimed an anticipated \$725.00 in unpaid rent for the month of December, 2013 at the time of making the application. The landlord testified during the hearing that the tenants did indeed fail to pay rent for December 1, 2013 and eventually abandoned the rental unit sometime in the middle of December, 2013. The landlord's agent also testified that she still has not been able to re-rent out the suite.

In the details section of the landlord's application, the landlord also claims \$25.00 for late payment fees relating to November and December, 2013 unpaid rent as required by clause number 12 on the signed tenancy agreement provided as evidence. Therefore, the total amount of the landlord's claim is \$1,536.98.

Analysis

I am satisfied that that the notice to end tenancy dated November 2, 2013 was personally served to the tenant and that the contents of the notice conformed with the requirements of the Act.

Based on the landlord's agent's evidence, including the notice to end tenancy and the absence of any evidence from the tenants to refute the evidence, I find that the tenants owe the landlord \$761.98 in unpaid rent for October and November, 2013. As the tenants remained in the rental suite during a significant part of December, 2013 and after the tenancy had ended in accordance with the signed agreement and the landlord was unable to re-rent out the suite during this time, I also award the landlord unpaid rent in the amount of \$750.00 for December, 2013.

Section 7(d) of the *Residential Tenancy Regulation* allows a landlord to charge a fee of no more than \$25.00 for late payment of rent which is documented in a tenancy agreement. Clause 12 of the written tenancy agreement, provided by the landlord as evidence, indicates that such as late rent fee can be charged. I find that the landlord claimed this amount on the details section of the landlord's application for dispute resolution, a copy of which was provided to the tenants and thereby putting the tenants on notice for this claim. As a result, I find that the landlord is entitled to two late fees for November and December, 2013 totaling \$50.00.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenants the \$50.00 filing fee for the cost of this application. Therefore, the total amount awarded to the landlord is \$1,586.98.

As the landlord already holds a \$362.50 security deposit, I order the landlord to retain this amount in partial satisfaction of the claim awarded pursuant to Section 38(4) (b) of the Act. As a result, the landlord is awarded \$1,224.48.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 of the Act in the amount of **\$1,224.48**. This Order must be served on the tenant and may then be filed in the Provincial Court (Small Claims) 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 07, 2014

Residential Tenancy Branch

