



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding TREELORNE DEVELOPMENT LTD.
and [tenant name suppressed to protect privacy]

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 tenant for the cost of the application.

The landlord served the tenant with a copy of the application, the amended copy of the application showing the increased monetary claim, and the evidence used for this hearing, all by registered mail. The landlord provided the Canada Post tracking number and verified that Canada Post indicated that it had been received by the tenant. Based on this, and in the absence of any evidence from the tenant to contradict this, I find that the tenant was served the hearing documents and evidence by the landlord as required by the *Residential Tenancy Act* (referred to as the Act).

An agent for the landlord appeared for the hearing. There was no appearance for the tenant 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 on December 18, 2013.

Issue(s) to be Decided

- Is the landlord entitled to unpaid rent for September, 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 testified that the tenancy started on May 1, 2013 for a fixed term of one year. The landlord and tenant signed a written tenancy agreement and the landlord collected a security deposit from the tenant in the amount of \$500.00 on April 30, 2013. Rent in the amount of \$1,000.00 was payable by the tenant on the first day of each month.

The landlord's agent testified that the tenant had failed to pay rent since September, 2013. Despite repeated chances given to the tenant by the landlord to make payment and unfulfilled promises to pay, as evidence by the landlord's written submissions, the nonpayment of rent continued for the following month of October, 2013, at which point the landlord served the tenant with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on October 1, 2013. The tenant failed to pay rent for November, 2013 and again the landlord served the tenant personally with another 10 Day Notice to End Tenancy for Unpaid Rent or Utilities on November 2, 2013.

The second notice to end tenancy was provided as evidence along with a signed proof of service document showing the tenant's signed acknowledgement of the notice. The notice shows an expected date of vacancy of November 12, 2013, for a total amount of \$3,100.00 of unpaid rent due on November 1, 2013.

The landlord testified that the tenant also failed to pay rent for December, 2013 and eventually abandoned the unit sometime around December 18, 2013. As a result, the landlord claims \$4,000.00 in unpaid rent for the months of September, October, November and December 2013. The landlord also claims \$100.00 for each month for late payment fees, totaling \$400.00, as required by the Rental Addendum document to the signed tenancy agreement.

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 tenant to refute the evidence, I find that the tenant owes the landlord \$4,000.00 in unpaid rent for September, October, November and December, 2013.

The landlord claimed \$400.00 in late rent fees relating to the months the rent was not paid by the tenant. 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. The addendum to the written tenancy agreement provided by the landlord as evidence indicates that such as late rent fee can be charged and as a result, I find that the landlord is entitled to \$25.00 for each month the tenant failed to pay rent for a total amount of \$100.00.

As the landlord has been successful in this matter, the landlord is also entitled to recover from the tenant the \$50.00 filing fee for the cost of this application. Therefore, the total amount awarded to the landlord is \$4,150.00.

As the landlord already holds a \$500.00 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 \$3,650.00.

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 **\$3,650.00**. 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: December 27, 2013

Residential Tenancy Branch

