



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The tenants did not attend this hearing, although I waited until 9:47 a.m. in order to enable them to connect with this teleconference hearing scheduled for 9:30 a.m. The landlord's representative at this hearing (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. She testified that one of the landlord's representatives sent a copy of the landlord's dispute resolution hearing package to the tenants by registered mail on November 27, 2013. She provided the Canada Post Tracking Number and testified that Canada Post's Online Tracking System revealed that the hearing package was successfully delivered to the tenants on December 2, 2013. I am satisfied that the landlord served the hearing package to the tenants. In accordance with sections 89 and 90 of the *Act*, the landlord's hearing package was deemed served to the tenants on December 2, 2013, the fifth day after its registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The landlord submitted undisputed written evidence in the form of the application for dispute resolution and sworn testimony that the tenants signed a Residential Tenancy

Agreement (the Agreement) with the landlord on October 4, 2013. According to the Agreement, the landlord testified that the tenants were to take occupancy on November 1, 2013, for a one-year fixed term. Monthly rent was set at \$1,080.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$540.00 security deposit paid on October 4, 2013.

The landlord submitted undisputed written evidence in the application for dispute resolution and sworn testimony that on October 9, 2013, the tenant(s) advised the landlord in writing that they had changed their mind about the Agreement they had signed and wished to be released from their obligations to the landlord.

The landlord and the tenants attempted to locate new tenants to fulfill the tenants' obligations established in the Agreement. The landlord testified that the rental unit was re-rented to new tenants as of November 15, 2013, who agreed to pay the same monthly rent as was stated on the Agreement. However, the landlord only received \$576.00, the pro-rated amount of rent for the remaining portion November 2013 from the new tenants.

The landlord applied for a monetary award of \$504.00, the amount of loss incurred as a result of the tenants' failure to take possession or pay rent for any portion of November 2014.

Analysis

Section 16 of the *Act* reads as follows:

16 *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

Based on the landlord's undisputed evidence, I find that the tenants did not fulfill their obligations under the Agreement signed on October 4, 2013 and the *Act*, when they entered into a binding contractual Agreement with the landlord.

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. In this case, there is undisputed evidence that the tenants did not pay any rent for November 2013, and were required to do so by signing their Agreement. However, section 7(2) of the *Act* places a responsibility on a

landlord claiming compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss.

Based on the evidence presented, I accept that the landlord did attempt to the extent that was reasonable to re-rent the premises for November 2013, and in fact, located a new tenant who mitigated the tenants' losses by taking possession on November 15, 2013, and paying rent for the remainder of that month. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize the tenants' exposure to the landlord's loss of rent for this fixed term Agreement.

I find that the landlord is entitled to a monetary award of \$504.00, the stated loss of income that the landlord incurred resulting from the tenants' failure to abide by the terms of the Agreement.

I also allow the landlord to recover the \$50.00 filing fee from the tenants.

The total amount of this monetary award is \$554.00. I allow the landlord to retain the tenants' \$540.00 security deposit in partial satisfaction of the monetary award issued in this decision. At the hearing, the landlord stated that there was no need to issue a monetary Order for the remaining \$14.00 of this monetary award, as the landlord was satisfied to retain all of the tenants' security deposit.

Conclusion

I allow the landlord's application for a monetary award. I order the landlord to recover that award for unpaid rent and recovery of the filing fee by retaining the security deposit for this tenancy in its entirety.

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: March 14, 2014

Residential Tenancy Branch

