



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was convened in response to an application by the landlord for a Monetary Order to recover unpaid rent / loss of revenue and to retain the security deposit, and inclusive of recovery of the filing fee associated with this application.

I accept the landlord's evidence that despite the tenant having been served with the application for dispute resolution and notice of hearing by *registered mail* in accordance with Section 89 of the Residential Tenancy Act (the Act) the tenant did not participate in the conference call hearing. The landlord provided proof of mail registration and that the mail had been received at the forwarding address provided by the tenant.

The landlord was given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to the monetary amount claimed for loss of revenue?

Is the landlord entitled to recover their filing fee?

Background and Evidence

The following is undisputed. The landlord collected a security deposit on December 13, 2014 and on December 18, 2014 the landlord and tenant entered into a written tenancy agreement to rent the rental unit as of January 01, 2014 for \$1100.00 per month. The landlord collected a security deposit in the amount of \$550.00 which the landlord retains in trust. On December 22, 2013 the tenant informed the landlord they would not be occupying the rental unit and for the landlord to return the security deposit by a notice dated February 15, 2013 to return their security deposit as they would not be occupying the rental unit. The landlord testified they were able to enter into a new agreement for

February 01, 2014. The landlord seeks unpaid rent / loss of revenue for the first month of the tenancy.

Analysis

On preponderance of the evidence of the landlord I have reached a decision.

Section 16 of The Act states as follows:

Start of rights and obligations under tenancy agreement

- 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.

I find that in this matter, a tenancy existed between the parties upon them entering the tenancy agreement and the landlord collecting the security deposit. The parties' respective rights and obligations under the Act came into full force on December 18, 2013.

Section 26 of the Act, in part, states as follows:

Rules about payment and non-payment of rent

- 26** (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

I find that if the tenant determined not to continue the tenancy, the tenant was obligated to give the landlord Notice to Vacate under Section 45 of the Act. I find that the tenant's communication of December 22, 2014 effectively placed the landlord on notice the tenant was not moving into the rental unit and ending the tenancy. I find that even if I were to accept the tenant's communication as Notice to End the tenancy under Section 45, it remains that the tenant would be responsible for the rent to January 31, 2014, and the tenant did not pay rent in the first month of the tenancy, January 2014, to which the landlord is entitled under the tenancy agreement.

As a result, I grant the landlord unpaid rent in the amount of \$1100.00. The landlord is further entitled to their filing fee of \$50.00, for a sum of **\$1150.00**. The security deposit collected will be off-set from the award made herein.

Calculation for Monetary Order

Unpaid rent	\$1100.00
Filing Fees for the cost of this application	50.00

Less Security Deposit	-550.00
Total Monetary Award to landlord	\$600.00

Conclusion

I Order that the landlord retain the deposit of \$550.00 in partial satisfaction of the claim and I grant the landlord an Order under Section 67 of the Act for the balance due of **\$600.00**. If necessary, this Order may be filed in the Small Claims Court and enforced as an Order of that Court.

This Decision is final and binding on both parties.

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: April 16, 2014

Residential Tenancy Branch

