



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC FF

Introduction

This hearing dealt with the landlord's application for monetary compensation.

The hearing first convened on March 3, 2014. The landlords and one tenant participated in the teleconference hearing. On that date, the tenant stated that she and the co-tenant had received the landlord's evidence but not the application. I adjourned the hearing to allow the landlord to serve the tenants with the application.

The hearing reconvened on April 25, 2014. On that date, the landlords, one tenant, counsel for the landlord and an assistant for the tenant all participated in the teleconference hearing.

At the outset of the reconvened hearing, each party confirmed that they had received the other party's evidence. Neither party raised any further issues regarding service of the application or the evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began in February or March 2012, with monthly rent of \$950 due in advance on the first day of each month. On February 5, 2014, the tenants were evicted from the rental unit pursuant to a writ of possession.

The tenancy has been the subject of previous dispute resolution hearings. Pursuant to a hearing convened over two dates, August 9, 2013 and September 24, 2013, a decision was issued on September 27, 2013. In the decision, the arbitrator granted the tenants a rent abatement of \$86.60 per month, until such time as the landlord repaired or replaced the washing machine.

On November 13, 2013 the parties attended another dispute resolution hearing, during which they reached a settlement agreement. The parties agreed that the tenancy would end on January 31, 2014, and the landlords were granted an order of possession for that date. This agreement and the order of possession were upheld in a review consideration decision dated February 18, 2014.

Landlord's Evidence

The landlord stated that on September 2, 2013 they served the tenants a notice of rent increase, which would increase the rent from \$950 to \$986.10 effective December 1, 2013. As supporting evidence the landlord submitted a photograph of a notice of rent increase posted on a door.

The landlord stated that they served the order of possession on the tenants by posting the order on the rental unit door on November 29, 2013. As supporting evidence, the landlord submitted a photograph of a notice of rent increase posted on an exterior door.

The landlord stated that the tenant paid \$813.40 for December 2013 rent; as supporting evidence the landlord submitted a copy of the tenant's cheque and copy of a receipt dated December 2, 2013 for receipt of \$813.40. The landlord further stated that the tenants did not pay any rent for January 2014.

The landlord denied making any agreement with the tenants to allow them to stay in the rental unit until the end of February 2014. The landlord stated that after the tenants were evicted on February 5, 2014, there was a lot of clutter and the landlord had to clean the unit, so they could not re-rent the unit until March 15, 2014.

The landlord claimed the following:

- 1) \$86.10 in unpaid rent for December 2013;
- 2) \$986.10 in unpaid rent for January 2014;
- 3) \$986.10 in lost revenue for February 2014;
- 4) \$10.98 in mailing costs;
- 5) \$120 to file for a writ of possession;

- 6) \$1800 for bailiff fees; and
- 7) \$14.29 for photo development costs.

In support of the remainder of their claim, the landlord also submitted invoices and receipts for items four through seven.

Tenant's Response

In response to the landlord's claim, the tenant stated as follows.

The tenant stated that she never received the order of possession that the landlord claimed to have posted on the rental unit door on November 29, 2013. The tenant pointed out that the photograph of the order on the door could have been posted at any time, as it was undated.

The tenant stated that she paid her December 2013 rent of \$900 in full after deducting \$86.60 for lack of laundry, for a total of \$813.40. The tenant stated that the landlord's notice of rent increase had been found invalid in a previous decision, because the increase was to take effect less than a year since they had moved in.

The tenant stated that on December 30, 2013 she paid the landlord \$830.40 in cash for January 2014, and she made a verbal agreement with the landlord's wife that they could stay an additional month, until the end of February. The tenant stated that she paid the rent in cash because the landlord required it in exchange for giving the tenants one more month. The tenant stated that she had part of the cash on hand as it was gifted to her at Christmas, and she withdrew the remainder from her bank account. As supporting evidence the tenant submitted a copy of her bank statement showing a cash withdrawal of \$400 on December 27, 2013. The tenant stated that she did not get the agreement in writing because she did not think it was a big issue. The tenant also stated that she did not ask for a receipt because the landlord does not believe in receipts.

The tenant stated that she did not pay the February 2014 rent because the landlord did not come to the door for the rent. The tenant stated that the landlord should only be entitled to a portion of February 2014 rent, because they were evicted on February 5, 2014.

Analysis

Upon consideration of the evidence and on a balance of probabilities, I find as follows.

I have no evidence before me that the notice of rent increase dated September 2, 2013 was not valid. The rent increase was to take effect beginning December 1, 2013, which is more than one year after the tenancy began. I am satisfied that the landlord posted the notice of rent increase, and the tenant did not provide sufficient evidence to rebut the presumption of deemed service. I therefore find that as of December 1, 2013, the rent increased to \$986.10.

The landlord did not provide evidence that they repaired or replaced the washing machine, so the tenant was entitled to continue to deduct \$86.60 from the monthly rent, for a balance of \$899.50. The tenant paid \$813.40 for December 2013 rent, so the landlord is entitled to the difference of **\$86.10** for December 2014.

In regard to January 2014 rent, I am not satisfied that the tenant paid \$830.40 as claimed. The tenant's bank statement shows a cash withdrawal of \$400 on December 27, 2013, but the tenant stated that she paid the landlord on December 30, 2013. The tenant stated that she paid the balance of \$430.40 in cash "that had been gifted to her," but the tenant did not provide any evidence of monetary gifts. The landlord is therefore entitled to monetary compensation of **\$899.50** for January 2014 rent.

I do not accept the tenant's testimony that she and the landlord's wife made a verbal agreement that the tenant could stay for one extra month. The tenant stated in the hearing that she did not insist on having a written agreement with the landlord about the extension because she did not think that it was "a big issue." Given the adversarial relationship between the parties by that time, I do not find it likely either that the landlord would agree to allow the tenant to stay an extra month or that the tenant would not insist on an agreement in writing.

The tenant did not provide sufficient evidence to rebut the landlord's evidence that they served the order of possession by posting it on the rental unit door on November 29, 2013. I find it most likely that the tenant did not pay February 2014 rent because she was aware that the tenancy was to end on January 31, 2014. However, as the tenancy ended on January 31, 2014, the tenant was over-holding from February 1 to 5, 2014, and the landlord is only entitled to a prorated amount of rent for those five days, in the amount of **\$160.65** (calculated as \$899.50 divided by 28 days, for a daily rate of \$32.13, for five days). Further, the landlord did not provide evidence that they mitigated their

loss by advertising to re-rent the unit by February 1, 2014, even though they were aware by mid-November 2013 that the tenancy would be ending on January 31, 2014.

I find that the landlord is not entitled to the fees claimed for filing for the writ of possession and hiring the bailiff. The landlord did not provide evidence that they attempted to mitigate this cost by contacting the tenant on or before January 31, 2014 to verify that the tenant was or was not moving out.

The landlord is not entitled to recovery of the mail and photo development costs, as the only cost associated with the dispute resolution process that is normally recoverable is the filing fee.

As the landlord's application was only partly successful, I find they are entitled to partial recovery of their filing fee, in the amount of **\$25**.

Conclusion

The landlord is entitled to monetary compensation totalling **\$1171.25**. I accordingly grant the landlord an order under section 67 for \$1171.25. This order may be filed in the Small Claims Court and enforced as an order of that Court.

The remainder of the landlord's application is dismissed.

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: May 5, 2014

Residential Tenancy Branch

