



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Regent Park Pinnacle Realty
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on December 19, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by each tenant on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for lost revenue; for cleaning; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord provided a copy of a tenancy agreement signed by the parties on September 20, 2013 for a 1 year fixed term tenancy beginning on October 1, 2013 for a monthly rent of \$1,300.00 due on the 1st of each month with a security deposit of \$650.00 and a pet damage deposit paid.

The tenancy ended when the tenants vacated the rental unit on December 11, 2013. The landlord submitted a copy of a decision dated December 2, 2013 from the landlord's Direct Request that granted the landlord an order of possession and a

monetary order in the amount of \$1,300.00 for the non-payment of rent for November 2013.

In this Application the landlord seeks a monetary order for the non-payment of rent for the months of November and December 2013 and for lost revenue for the month of January 2014. The landlord submits in their Application for Dispute Resolution that the rental unit was dirty and messy when the tenant's moved out and they were fearful they would not be able to re-rent the unit for January 2014.

The landlord also submits that the tenancy agreement was for a fixed term due to end September 30, 2014 and that the landlord was not able to re-rent the unit before February 1, 2014. The landlord's agent testified that they began advertising on Craigslist sometime in January 2014 after the unit had been sufficiently cleaned.

The landlord also claims \$500.00 for cleaning the rental unit. The landlord has provided no evidence as to the condition of the rental unit at either the start of the tenancy or the end of the tenancy.

Analysis

As the landlord already has a monetary order for unpaid rent for the month of November 2013, I find the matter to be *res judicata*. *Res judicata* is the doctrine that an issue has been definitively settled by a judicial decision. The three elements of this doctrine, according to Black's Law Dictionary, 7th Edition, are: an earlier decision has been made on the issue; a final judgement on the merits has been made; and the involvement of the same parties. As such, I dismiss this portion of the landlord's Application, without leave to reapply.

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 37 of the *Act* requires a tenant who is vacating a rental unit to leave the unit reasonably clean, and undamaged except for reasonable wear and tear, and give the landlord all keys or other means of access that are in the possession and control of the tenant and that allow access to and within the residential property.

As the landlord has provided no evidence at all regarding the condition of the rental unit I find the landlord has failed to provide any evidence the tenants failed to comply with Section 37 of the *Act*. I therefore dismiss the portion of the landlord's Application seeking compensation for cleaning.

I accept the tenancy was for a fixed term and that as a result of the tenants' failure to pay rent that they caused the tenancy to end before the end of the fixed term. As such, the tenants are responsible for the payment of rent until the end of the fixed term or until the landlord was able to re-rent the unit, subject to the landlord's obligations to mitigate any losses.

As the landlord has provided no evidence that the rental unit required any cleaning and because the tenants vacated the rental unit on or before December 11, 2013 I find the landlord should have begun to advertise the rental unit prior to the start of January 2014. I find that by failing to advertise until January 2014, the landlord did not take any steps as soon as possible to mitigate the losses suffered in January 2014 due to loss of revenue. I therefore, dismiss this portion of the landlord's claim.

However, based on the landlord's undisputed testimony I accept the tenants failed to pay rent for the month of December 2013 and as such the landlord has suffered a loss resulting from the tenants' failure to comply with Section 26 of the *Act*. Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,325.00** comprised of \$1,300.00 rent owed and \$25.00 of the \$50.00 fee paid by the landlord for this application as they were only partially successful.

I order the landlord may deduct the security deposit and pet damage deposit held in the amount of \$1,300.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$25.00**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: April 07, 2014

