



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WALL FINANCIAL CORPORATION
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

For the tenant – CNC, CNR, ERP, RP, AS, RR

For the landlord – MNR, MND, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to both parties' applications for Dispute Resolution. The landlord applied for a Monetary Order for unpaid rent; a Monetary Order for damage to the unit, site or property; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The hearing went ahead as scheduled and the phone line remained open for 10 minutes for the tenant GM to appear concerning his application. The tenant GM did not name the estate of the other tenant on his application. As the tenant GM failed to appear at the hearing to present the merits of their application the tenant's application is dismissed without leave to reapply. The hearing continued based on the landlord's application only.

The representative for the estate of the tenant GC attended the hearing with an agent for the landlord (the landlord). The parties in attendance gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other

parties in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

The landlord testified that a previous hearing had taken place on June 10, 2014 for file #820459. At that hearing the landlord was awarded a Monetary Order for unpaid rent for May and June 2014 and an Order of Possession. The landlord testified that the tenant GM applied for a review consideration of the decision issued at that hearing and a review hearing was granted which is due to be held on August 20, 2014. The original decision and orders were suspended until the review hearing takes place.

The landlord testified that this monetary claim for this hearing also contains an amount for the rent for May and June. After discussing this with the landlord I informed the landlord that as the original orders had been suspended concerning the unpaid rent for May and June I was unable to deal with the matter concerning unpaid rent for May and June at this hearing today. I was; however, able to deal with the landlord's claim for a loss of rent for July and August as these issues had not been dealt with at the original hearing.

The landlord withdrew her application for a Monetary Order for damage to the unit, site or property at this time.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for a loss of rental income for July and August, 2014?

Background and Evidence

The landlord testified that this tenancy started with GC on October 15, 2008 and the tenant GM was added to the tenancy agreement in 2010. The landlord testified that the tenant GC passed away on March 04, 2014 and the tenant GM remained the sole tenant of the unit. Rent for this unit at the end of the tenancy was \$1,015.00 per month and was due on the 1st of each month.

The landlord testified that the tenant GM did not vacate the rental unit until July 04, 2014 and failed to pay rent for July, 2014. The landlord testified that they have been unable to re-rent the unit so far in July due to the condition the unit was left in by GM. The landlord testified that the doors were left off the tracks, two drapes had cigarette burns in and two other sets of drapes had suffered some damage from the tenant's pet. The drapes have to be replaced. The carpets which were beige were left black and stained. A carpet cleaning company were called in but the stains could not be removed and the carpets have to be replaced. The drapes and carpets are scheduled to be refitted next week.

Some of the flooring tiles were left cracked and as they cannot be matched the whole area requires replacement which is also scheduled for next week. The walls were left extremely dirty and with some damage. The walls are scheduled to be repainted this weekend of July 19, 2014. The unit was left very dirty and this took 10 hours to clean and bag up the garbage. A removal company had to be called to remove larger items and 10 garbage bags. This work was started on July 05, 2014.

The landlord testified that they have a rolling advertisement for rental units but this unit has not been ready to show so far in July. The landlord is hoping it will rent for August 01, 2014 but seeks to recover a loss of rent for July and August in case it does not rent.

The representative for the estate of the tenant GC was given opportunity to provide any testimony concerning the landlord's claim but declined to comment.

Analysis

I have carefully considered all the evidence before me, including the undisputed testimony of the landlord. I refer the parties to the Residential Tenancy Policy Guidelines #3 which states, in part, that even where a tenancy has been ended by proper notice, if the premises are un-rentable due to damage caused by the tenant, the landlord is entitled to claim damages for loss of rent. The landlord is required to mitigate the loss by completing the repairs in a timely manner.

The landlord has testified to the damage and cleaning that was required in the unit. I find the condition the tenant GM left the unit in when he vacated on July 04, 2014 would be sufficient to prevent the landlord renting the unit from July 05, 2014. I am satisfied that the landlord has taken steps to prepare the unit for rental by having the unit cleaned; the garbage removed as quickly as possible and in ordering the drapes and carpets and floor repairs. As this work has extended into July and because the tenant did not vacate the unit until July 04, 2014 it is my decision that the landlord is entitled to recover a loss of rent for July, 2014 of \$1,015.00. As the landlord did not enter into a new tenancy agreement with the tenant GM after the tenant GC passed away in March, and as the deceased tenant GC could be held responsible for some of the damage to the tiles, carpet and drapes, the tenant and the deceased tenants estate will both be named on the Monetary Order. A Monetary Order for **\$1,015.00** has been issued pursuant to s. 67 of the *Act*.

I am not satisfied that the landlord is entitled to recover a loss of rent for August, 2014 as most of the remedial work will be completed over the next week therefore allowing the landlord time to show the unit to prospective tenants and potentially re-renting the unit for August. This section of the landlord's claim is therefore dismissed.

I find the landlord is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in partial favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$1,065.00**. The Order must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced through the Provincial Court 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: July 17, 2014

Residential Tenancy Branch

