



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 by way of a conference call in response to the Landlord's Application for Dispute Resolution (the "Application") for a Monetary Order for unpaid rent, to keep the Tenant's security deposit, and to recover the filing fee.

The Landlord and the Tenant appeared for the hearing and provided affirmed testimony during the hearing. Neither party provided written evidence prior to the hearing. The Tenant confirmed receipt of the Landlord's Application and Notice of Hearing documents by registered mail which I determined were served in accordance with the *Residential Tenancy Act* (the "Act").

The hearing process was explained and the participants were asked if they had any questions. Both parties were provided the opportunity to present their evidence and to cross-examine the other party, and make submissions to me.

Issue(s) to be Decided

- Is the Landlord entitled to the unpaid portion of March, 2014 rent in the amount of \$255.00 after evicting the Tenant?

Background and Evidence

Both parties agreed that this month to month tenancy started on December 1, 2010. Rent was payable by the Tenant to the current Landlord in the amount of \$600.00 on the first day of each month. The Landlord confirmed that the Tenant had paid \$300.00 as a security deposit at the start of the tenancy which he still retains.

The Landlord testified that the Tenant had failed to pay rent for March, 2014 on the day it was due. As a result, the Landlord served the Tenant with a 10 Day Notice to End

Tenancy for Unpaid Rent or Utilities (the "Notice"). The Landlord testified that the Tenant made a partial payment of \$345.00 towards the rent and then left the tenancy on March 25, 2014. The Landlord now seeks the remaining balance of the March, 2014 rent in the amount of **\$255.00**.

The Tenant testified that he was frustrated with the tenancy as the Landlord had moved in drug addicts into the premises which were affecting his tenancy; however, no evidence supporting this allegation was provided by the Tenant. As a result, the Tenant testified that he accepted the Notice and moved out on the date of vacancy on the Notice and gave the Landlord his forwarding address in writing. The Tenant further explained that the Landlord had entered his unit illegally to serve him the Notice.

The Tenant submitted that he should not have to be responsible for the remainder of the balance of March, 2014 rent because it was the Landlord that evicted him and that he should not have to pay rent for the period of time he was not residing in the rental suite.

When I attempted to explain the provisions of the Act and the Policy Guideline around paying rent when the tenancy is ended by the Landlord (as explained below), the Tenant became frustrated and began to use abusive language in the hearing. I explained to the Tenant that abusive language would not be tolerated and cautioned him pursuant to Rule 8.7 of the Rules of Procedure. However, the Tenant continued to use abusive language and exited the call before it had been formally concluded. As a result, the hearing continued in the absence of the Tenant.

The Landlord testified that he had received the Tenant's forwarding address but was unable to recall the exact date and method of how it was served by the Tenant. The Notice was not provided in written evidence but the Landlord testified that it was served to the Tenant on March 9, 2014 and had an effective vacancy date of March 25, 2014.

Analysis

Section 26(1) of the Act states that a Tenant must pay rent when it is due under a tenancy agreement whether or not the Landlord complies with the Act. Furthermore, Policy Guideline 3 to the Act explains the principles which apply to residential tenancies and to cases where the Landlord has elected to end the tenancy as a result of a fundamental breach by the Tenant of the Act or tenancy agreement. It states in part that:

"In a month to month tenancy, if the tenancy is ended by the landlord for non-payment of rent, the landlord may recover any loss of rent suffered for the next month as a notice

given by the Tenant during the month would not end the tenancy until the subsequent month.”

[Reproduced as written.]

Based on the above provisions, the Tenant would not only have been liable for the remainder of the March, 2014 rent after the he had vacated but could also have been liable for April, 2014 rent; however, the Landlord only seeks to recover lost rent for March, 2014 in the amount of \$255.00.

In addition, if the Tenant’s argument that he should not have to pay rent for the time he was not residing in the unit after March 25, 2014 had merit, which it does not, then the partial amount of rent he paid to the Landlord would still have not been sufficient to cover the period he was residing in the rental unit.

The Tenant failed to pay rent on the day it was due under the tenancy and this is a fundamental breach of the agreement. Therefore the Tenant is liable for the losses claimed by the Landlord in the amount of **\$255.00** for the remainder of the March, 2014.

As the Landlord has been successful in his claim, I also award the Landlord the **\$50.00** filing fee for the cost of making the Application pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is **\$305.00**. However, the Landlord explained that he just wanted to keep the Tenant’s security deposit in full satisfaction of this award.

Conclusion

For the above reasons, I order the Landlord to retain the Tenant’s security deposit in the amount of \$300.00 in **full** satisfaction of the Application.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: August 11, 2014

Residential Tenancy Branch

