



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD, FF

Introduction

This hearing concerns the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / retention of the security deposit / and recovery of the filing fee. The landlord's agent attended and gave affirmed testimony.

The landlord's agent testified that the application for dispute resolution and notice of hearing (the "hearing package") were served by way of registered mail. Evidence submitted by the landlord's agent includes the Canada Post tracking number for the registered mail; the Canada Post website informs that the item was "accepted at the Post Office" on May 27, 2014, that it was "unclaimed by recipient," and that ultimately it was "successfully returned to the sender."

Pursuant to section 90 of the Act which addresses **When documents are considered to have been received**, as the hearing package was sent by registered mail on May 27, 2014, I find that the tenant is deemed to have received it on June 01, 2014, which is the "5th day" after it was mailed.

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement the fixed term of tenancy is from October 01, 2013 to September 30, 2014. Monthly rent of \$3,500.00 is due and payable in advance on the first day of each month, and a security deposit of \$1,750.00 was collected. A move-in condition inspection report was completed with the participation of both parties.

By email dated March 03, 2014 the tenant gave notice to end tenancy. Thereafter, while it is understood that the tenant vacated the unit sometime prior to the end of March 2014, many of her belongings were left behind at the unit. A "notice of final opportunity to schedule a condition inspection" was issued by the landlord, however, the tenant did not attend the unit to participate in the move-out condition inspection. In the result, the move-out condition inspection report was completed by the landlord in the tenant's absence. The landlord's agent testified that a copy of the move-out condition inspection report was thereafter sent to the tenant.

Arising from rent of \$3,500.00 which was unpaid when due on April 01, 2014, the landlord issued a 10 day notice to end tenancy for unpaid rent dated April 02, 2014. The notice was served by way of posting on the unit door on that same date. A copy of the notice was submitted in evidence. Subsequently, the tenant made no further payment toward rent.

Following efforts made by the landlord to contact the tenant, the tenant orally provided her forwarding address over the telephone on or about May 15, 2014. Subsequently, the landlord filed an application for dispute resolution on May 23, 2014.

After advertising, new renters were found effective from May 05, 2014.

Analysis

The attention of the parties is drawn to the following particular sections of the Act and the Residential Tenancy Policy Guidelines:

Section 37: **Leaving the rental unit at the end of a tenancy**

Section 45: **Tenant's notice**

Section 7: **Liability for not complying with this Act or a tenancy agreement**

Guideline # 1: "Landlord & Tenant – Responsibility for Residential Premises."

Guideline # 4: "Liquidated Damages."

Based on the documentary evidence and affirmed / undisputed testimony of the landlord's agent, the various aspects of the landlord's claim and my findings around each are set out below.

\$3,500.00: *unpaid rent / loss of rental income for April 2014*

I find that notice given by the tenant to end the fixed term tenancy does not comply with the statutory provisions set out in section 45 of the Act. In particular, I find that the tenant ended the fixed term tenancy “earlier than the date specified in the tenancy agreement as the end of the tenancy.” I further find that the landlord undertook to mitigate the loss of rental income by advertising for new renters in a timely fashion. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$1,750.00: *liquidated damages*

Pursuant to the “EARLY TERMINATION” clause 3.0 in the written tenancy agreement, I find that the landlord has established entitlement to the full amount claimed.

\$1,146.86: *(\$838.95 + \$307.91) repairs / rubbish removal*

\$275.00: *cleaning in the unit*

\$351.79: *carpet cleaning*

In view of the comparative results of the move-in and move-out condition inspection reports, clause 2.14 in the written tenancy agreement (“To have the carpets professionally cleaned....”) and in consideration of the statutory provisions set out in section 37 of the Act and guidelines detailed in Residential Tenancy Policy Guideline # 1, I find that the landlord has established entitlement to the full amount(s) claimed.

\$400.00: *landscaping*

In view of the provision contained at clause 2.4 of the written tenancy agreement (“To keep the flower beds, gardens and lawns on the Premises properly cultivated and maintained”), and in consideration of the guidelines detailed in Residential Tenancy Policy Guideline # 1, I find that the landlord has established entitlement to the full amount claimed.

\$105.20: *compensation for temporary storage of tenant’s belongings*

While it appears that the tenant had vacated the unit by the end of March 2014, I find that many of her belongings had not been removed and were stored until such time as she returned to take possession of them. In the result, I find that the landlord has established entitlement to the full amount claimed.

\$100.00: *filing fee*

As the landlord has succeeded with this application, I find that the landlord has established entitlement to recovery of the full filing fee.

Total: \$7,628.85

I order that the landlord retain the security deposit of **\$1,750.00**, and I grant the landlord a **monetary order** for the balance owed of **\$5,878.85** (\$7,628.85 - \$1,750.00).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$5,878.85**. Should it be necessary, this order may be served on the tenant, filed in the Small Claims Court and 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: September 30, 2014

Residential Tenancy Branch

