



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, OPR, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord for an order of possession, a monetary order for unpaid rent and an order to recover the filing fee for the Application.

Only the Agent for the Landlord appeared at the hearing. They gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions to me.

The Agent testified that they served the Tenants with the Application and Notice of Hearing by registered mail, sent on July 31, 2014, to each of the Respondents. In evidence are registered mail receipts in support of service. Under the Act the Tenants were deemed served five days later. I find the Tenants have been duly served in accordance with the Act.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

At the outset of the hearing the Agent for the Landlord explained the Tenants had vacated the rental unit and an order of possession was no longer requested.

The Landlord also requested to amend the Application to include a claim against the deposits in partial satisfaction of the claims.

Issue(s) to be Decided

Have the Tenants breached the Act or tenancy agreement, entitling the Landlord to monetary relief?

Background and Evidence

This tenancy began on May 1, 2014, for a fixed term of six months, to end on October 31, 2014, following which it became a month to month tenancy. The monthly rent was \$840.00, payable on the first day of the month, and the Tenants paid a security deposit of \$420.00 on or about May 1, 2014, and in or about June, the Tenants paid a pet damage deposit of \$200.00.

The affirmed testimony of the Agent for the Landlord was that the Tenants failed to pay all the rent due in July and were served with a 10 day Notice to End Tenancy for non-payment of rent of \$440.00 on July 2, 2014. The Agent testified that the Tenants paid \$400.00 but did not all the outstanding rent and did not apply to dispute the 10 day Notice.

The Agent further testified that the Tenants did not pay rent for August and left the rental unit on August 31, 2014.

Although the Tenants vacated the rental unit in August, the Agent testified that the Landlord suffered a loss of rent for September as they were unable to re-rent the subject rental unit until October 1, 2014. The Landlord submitted evidence of advertising for the rental unit and the Agent testified they found renters for October 1, 2014.

The Landlord claims \$440.00 for rent due from July, \$840.00 for August, \$840.00 for loss of September rent, as well as late payment fees of \$20.00 per month for July and August, pursuant to the tenancy agreement, and to recover the \$50.00 filing fee for the Application.

The Landlord also requested to amend the Application to include a claim against the deposits in partial satisfaction of the claims.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

Although the Landlord is entitled to an order of possession in these circumstances, the Tenants have vacated the rental unit and therefore, an order of possession is no longer required.

I find that the Tenants have failed to pay rent under the Act and tenancy agreement and breached a fixed term tenancy agreement. I find the Landlord mitigated their losses by advertising and re-renting the rental unit in a reasonable fashion.

I find the Landlord has established a total monetary claim of **\$2,210.00** comprised of the balance of rent \$440.00 for rent due from July, \$840.00 for August, \$840.00 for loss of

September rent, as well as late payment fees of \$20.00 per month for July and August, pursuant to the tenancy agreement, and to recover the \$50.00 filing fee for the Application.

I allow the Landlord to amend the claim to include the deposits and order that the Landlord retain the deposits of **\$620.00** in partial satisfaction of the claim and I grant the Landlord an order under section 67 for the balance due of **\$1,590.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

The Landlord has leave to apply for further monetary orders for cleaning and damages.

Conclusion

The Tenants failed to pay rent and did not file to dispute the Notice to End Tenancy, breached a fixed term tenancy agreement and vacated the rental unit. Therefore, an Order of Possession is not required.

The Landlord is granted a monetary order for compensation due, may keep the deposits in partial satisfaction of the claims, and has leave to apply for further monetary compensation.

This decision is final and binding on the parties, unless otherwise provided under the Act, and is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: October 02, 2014

Residential Tenancy Branch

