



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

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

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for an order of possession, a monetary order and an order authorizing her to retain the security deposit. Both parties participated in the conference call hearing.

At the hearing, the landlord advised that the tenant had vacated the rental unit and she withdrew her claim for an order of possession and for loss of income for February. The hearing proceeded to address solely her claim for loss of income for January and recovery of the \$50.00 filing fee she paid to bring this application.

Issue to be Decided

Is the landlord entitled to a monetary order as claimed?

Background and Evidence

Most of the facts are not in dispute. The tenant was obligated to pay \$920.00 in rent on the first day of each month and he did not pay rent on December 1, 2014. On December 2, the landlord served the tenant with a 10 day notice to end tenancy for unpaid rent (the "Notice"). The tenant paid the outstanding rent on December 17 and this payment was accepted for use and occupancy only. The tenant did not vacate the unit until December 31. The tenant has not yet returned the keys to the rental unit.

The landlord claimed that she did not know the tenant was vacating the rental unit. The tenant claimed that he told the landlord on December 18 that he would be vacating at the end of the month and further claimed that on January 1 he left a voicemail message for the onsite property manager advising that he had moved out.

The landlord testified that on January 9 she discovered that the tenant had vacated the rental unit and she immediately began advertising the unit. As of the date of the hearing, the landlord had not yet re-rented the unit.

The landlord seeks to recover \$920.00 in lost income for the month of January as well as the filing fee paid to bring this application.

Analysis

The tenant did not pay the rental arrears until December 17, 15 days after he received the Notice. I find that the tenancy ended on December 12 because the tenant neither paid the rental arrears within 5 days and did not apply to dispute the Notice and was therefore conclusively presumed to have accepted that the tenancy ended on the effective date of the Notice. The tenant did not move out on the effective date of the Notice and I find insufficient evidence to prove that the tenant told the landlord that he was vacating the unit. Further, the tenant retained the keys to the unit contrary to the requirements of s. 37 of the Act and I find that the landlord had reason to question whether he had surrendered possession of the unit. I find that the landlord lost income for the month of January as a direct result of the tenant failing to comply with his obligations under the law and I find that the landlord is entitled to recover that lost income.

I award the landlord \$920.00. As the landlord has been successful in her application I also find she should recover the filing fee and I award her \$50.00. The parties agreed that the tenant currently has an \$18.00 credit as he overpaid December's rent by that much. I order the landlord to apply the \$18.00 credit and the \$425.00 security deposit to the amount owed and I grant her a monetary order under section 67 for the balance of \$527.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlord is granted a monetary order for \$527.00 and will retain the security deposit.

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: January 16, 2015

Residential Tenancy Branch

