



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim.

The landlord named CM, the mother of the occupying tenant HH, as the respondent in this matter. CM signed a co-signer document and I found that CM therefore was appropriately named as a respondent in this matter.

The landlord participated in the teleconference hearing, but the respondent did not call into the hearing. The landlord submitted evidence that they served the respondent with the application for dispute resolution and notice of hearing by registered mail sent on September 5, 2014. The landlord provided evidence that the respondent refused to accept the package. A party may not avoid service by refusing to accept a document mailed by registered mail.

Section 90 of the Act states that a document is deemed to have been served five days after mailing. I found that the respondent was deemed served with notice of the hearing on September 10, 2014, and I proceeded with the hearing in the absence of the respondent.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on October 15, 2013 as a fixed-term tenancy to end on October 31, 2014. Rent in the amount of \$1200 was payable in advance on the first day of each month. On June 27, 2014 the landlord received written notice from the tenant that she intended to move out on July 12, 2014. The tenant's rent cheque for July 2014 rent bounced, and on July 2, 2014 the tenant texted the landlord to say that she had moved out. The landlord provided evidence that she advertised to re-rent the unit as soon as possible, but she was unable to re-rent it until September 1, 2014. The landlord has claimed unpaid rent and lost revenue of \$2400 for July and August 2014, as well as \$60 for two late rent fees for those months.

In support of their claim, the landlord submitted evidence including the following:

- a copy of a residential tenancy agreement signed by the landlord and the occupying tenant HH, as well as an attached co-signor agreement signed by the landlord and the respondent CM, indicating a monthly rent of \$1200 due on the first of each month for a fixed term ending October 31, 2014;
- a copy of the tenant's written notice to vacate, in which the tenant notes that the landlord could keep the security and pet deposits;
- copies of rental ads; and
- a copy of the Landlord's Application for Dispute Resolution, filed September 5, 2014.

Analysis

I find that the landlord has established their claim for \$2400 in unpaid rent and lost revenue for July and August 2014. The tenant HH and/or the respondent CH failed to pay rent for July 2014 and the landlord was unable to re-rent the unit until September 2014, so they are also responsible for \$1200 in lost revenue for August 2014.

The landlord is not entitled to the amounts claimed for late fees. Under the Act and Regulation, a landlord cannot charge a fee greater than \$25 per month for late payment of rent. Therefore, that section of the tenancy agreement is void and unenforceable.

As the landlord's application was mostly successful, she is entitled to recovery of the \$50 filing fee for the cost of this application.

Conclusion

I grant the landlord an order under section 67 for the balance due of \$2450. This order may be 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: March 27, 2015

Residential Tenancy Branch

