



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 conference call in response to the landlord's application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlord to the female tenant, was done in accordance with section (s) 89 of the *Residential Tenancy Act (Act)*; served by registered mail to the female tenant on October 10, 2014. Canada Post tracking numbers were provided by the landlord in documentary evidence. The female tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*. As the landlord did not serve the male tenant with hearing documents pursuant to s. 89 of the *Act*, any Orders will be against the female tenant only.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent?
- Is the landlord permitted to keep all or part of the security deposit?

Background and Evidence

The landlord testified that this tenancy was due to start on October 01, 2014. Rent was agreed at \$750.00 per month plus utilities. The tenants paid a security deposit of \$375.00 on September 12, 2014.

The landlord testified that she had advertised this unit for rent and the tenants came to view the unit and agreed to rent it from October 01, 2014 for a six month term. The landlord prepared a tenancy agreement and had emailed a copy of this to the female tenant. On September 16, 2014 the tenant emailed the landlord and said they would not be moving into the unit due to a family emergency.

The landlord put the unit back up for rent that evening and had a potential tenant look at the unit but they were not interested in renting it. The landlord testified that as the tenants had entered into the agreement verbally to rent the unit and then changed their minds; the landlord seeks to recover a loss of rent for October of \$750.00. The landlord had to re-advertise the unit and it was not re-rented until November 01, 2014.

The landlord seeks an Order to keep the security deposit of \$375.00 to offset against the loss of rent. The landlord also seeks to recover the \$50.00 filing fee from the tenants.

Analysis

The tenant did not appear at the hearing to dispute the landlord's claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenant, I have carefully considered the landlord's documentary evidence and sworn testimony before me.

I refer the parties to s. 16 of the *Act* which states: *The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.*

Consequently, I find the tenants did enter into a verbal agreement to rent this unit and paid a security deposit. Therefore, the parties had established a tenancy even if there is nothing in writing at that time. The earliest the tenants could have ended the tenancy would have been March 31, 2015; however, as the landlord did manage to re-rent the unit for November 01, 2014 then the tenant's responsibility for the rent ended on October 31, 2014.

I therefore uphold the landlord's claim to recover a loss of rent for October, 2014 of **\$750.00**. I Order the landlord to keep the security deposit of **\$375.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the rent owed.

As the landlord's claim has merit I find the landlord is entitled to recover the filing fee of **\$50.00** pursuant to s. 72(1) of the *Act*.

Conclusion

For the reasons set out above, I grant the landlord a Monetary Order pursuant to Section 67 and 72(1) of the *Act* in the amount of **\$425.00**. This Order must be served on the Respondent CD and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondent fails to comply with the Order.

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: May 12, 2015

Residential Tenancy Branch

