



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 scheduled to hear a landlord's application for a Monetary Order for unpaid rent. The two named tenants did not appear at the hearing. The landlords' agents testified that the male tenant was served with the hearing documents in person at the tenant's forwarding address on October 22, 2014. The landlord's agents submitted that the hearing documents for the female tenant were given to the receptionist at her work place.

Section 89(1) of the Act provides for ways an applicant must serve a respondent with an Application involving a monetary claim. The permissible methods of service under this section are: personal service, registered mail, or as ordered by the Director. Based upon the undisputed evidence before me, I was satisfied the male tenant was served with the hearing documents in a manner that complies with the Act. However, the landlord did not serve the female tenant in one of the permissible ways and since the female tenant did not appear at the hearing, I was unable to conclude the female tenant was sufficiently served with notice of this proceeding and I excluded her as a party to this dispute. The landlord indicated that they wished to proceed against the male tenant only.

During the hearing, the landlords' agents requested that I amend the Application to indicate they were seeking authorization to retain the security deposit. Although the monetary amount indicated on the Application was net of the security deposit the landlord had failed to tick the applicable box to request retention of the security deposit. I found the request for amendment to be non-prejudicial to the tenants as the amount of the Monetary Order sought remained unchanged and I amended the Application accordingly.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover unpaid and/or loss of rent from the tenant for the month of September 2014?
2. Are the landlords authorized to retain the security deposit?

Background and Evidence

The tenancy commenced October 1, 2013 for a one year fixed term set to expire September 30, 2014. The landlord collected a security deposit in the amount of \$2,000.00. The tenants were required to pay rent of \$4,000.00 on the 1st day of every month. On August 13, 2014 the tenants emailed the landlord to give notice of their intention to end the tenancy at the end of August 2014. The landlord responded, via email, to notify the tenants that they would be held responsible for rent until the end of the lease term if a new tenant was not found in time. The landlords testified that they commenced advertising efforts right away for the same amount of rent and had showings but the unit remained vacant until October 2014. The landlord attempt to collect the rent for September 2014 by way of the pre-authorized debit but it was denied for insufficient funds.

The landlords seek recovery of unpaid and/or loss of rent in the amount of \$4,000.00 for the month of September 2014 by way of the security deposit and a Monetary Order for the balance owing.

Documentary evidence provided by the landlord included copies of: the tenancy agreement; condition inspection reports; and, several email exchanges between the parties.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

I have reviewed the tenancy agreement and I find that, pursuant to the terms of tenancy, the tenants were responsible to pay rent for the fixed term up to and including the month of September 2014. The tenants did not appear at the hearing or otherwise present any evidence to suggest they had a right under the Act to end the fixed term tenancy earlier than the expiry date of September 30, 2014.

Based upon the undisputed evidence before me, I am satisfied the tenants breached their tenancy agreement by ending the tenancy earlier than the expiry date of their fixed term and they did not pay rent for the fixed term which resulted in a loss of rent in the amount of \$4,000.00 to the landlords for the month of September 2014. I am also satisfied that the landlord made reasonable efforts to re-rent the unit in a timely manner. Therefore, I find the landlord has established an entitlement to recover \$4,000.00 from the tenant as requested.

I further award the landlord recovery of the \$50.00 filing fee paid for this Application.

I authorize the landlords to retain the \$2,000.00 security deposit in partial satisfaction of the rent owed to the landlords.

In light of the above, I provide the landlords with a Monetary Order for the net balance of \$2,050.00 as requested [calculated as \$4,000.00 + \$50.00 - \$2,000.00].

Conclusion

The landlords have been authorized to retain the security deposit and have been provided a Monetary Order for the balance of \$2,050.00 to serve and enforce as necessary.

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 15, 2015

Residential Tenancy Branch

