



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was scheduled to deal with the landlord's application for a Monetary Order for unpaid and/or loss of rent for January 2015. The landlord named two tenants in filing this Application. The landlord testified that he personally served the male tenant with the hearing documents on January 8, 2015 in the presence of a witness. The landlord provided the name of his witness and stated that he was available to testify. I found the landlord credible and since the testimony was undisputed I found it unnecessary to call the witness.

Section 89(1) of the Act requires that an Application for Dispute Resolution pertaining to a monetary claim must be served upon each respondent. Due to insufficient service of hearing documents upon the female tenant I excluded her as a party to this dispute. Having been satisfied the male tenant was sufficiently served with notice of this proceeding, I continued to hear the landlord's claims against the male tenant, with consent.

During the hearing, the landlord requested authorization to retain the security deposit in partial satisfaction of the rent owed to the landlord. I found this request non-prejudicial to the tenant as it would reduce the amount of the Monetary Order and I permitted the amendment.

During the hearing, the landlord requested that unpaid water bills be added to his claim. I did not permit this amendment as the tenant had not been put on notice that unpaid utilities would be determined during this proceeding and to permit the amendment would violate the principles of natural justice.

I noted that the landlord provided very little documentary evidence for this proceeding. The landlord pointed to a previous Application for Dispute Resolution made under the Direct Request procedure as support for his submissions (file number appears on the cover page of this decision). I took the landlord's verbal testimony as evidence and compared it to documentary evidence submitted under the previous Application. I found the landlord's verbal testimony to be consistent and supported by the documentary evidence provided for the previous Application; therefore, I accepted the landlord's undisputed verbal testimony in reaching this decision.

Issue(s) to be Decided

Has the landlord established an entitlement to recover unpaid and/or loss of rent for the month of January 2015?

Background and Evidence

The eight month fixed term tenancy commenced August 1, 2014 and the tenants were required to vacate the rental unit by March 31, 2015. The landlord collected a security deposit of \$1,750.00 and the tenants were required to pay rent of \$3,500.00 on the 1st day of every month.

The tenants failed to pay rent for December 2014 and the landlord posted a 10 Day Notice to End Tenancy for Unpaid Rent on the door of the rental unit on December 11, 2014. The landlord was successful in obtaining an Order of Possession and Monetary Order for unpaid rent for the month of December 2014 by way of an Application for Dispute Resolution by Direct Request (file number for that Application provided on cover of this decision). The decision and Orders for that Application were issued by an Arbitrator on January 7, 2015. The landlord testified that the tenants vacated the rental unit on January 11, 2015.

Since the tenants were still in occupation of the rental unit in January 2015, the landlord deposited their January 2015 rent cheque on January 2, 2015. The rent cheque was returned on January 6, 2015 and the landlord proceeded to file this Application to request compensation for unpaid and/or loss of rent for the month of January 2015.

The landlord was asked about efforts to re-rent the unit. The landlord testified that he obtained a demolition permit for the rental unit on January 24, 2015 and demolished the rental unit at the end of February 2015. The landlord explained that it had been his plan to demolish the property after the fixed term tenancy was over but that such plans moved ahead of schedule because the tenants ended the tenancy early.

Analysis

Under the Act, a tenant is required to pay rent when due pursuant to their tenancy agreement and as provided by the Act. The case before me deals with unpaid and/or loss of rent for January 2015 only since the unpaid rent for December 2014 has already been dealt with by way of a previous Application. The Arbitrator considering the landlord's previous Application concluded that the tenancy came to an end on December 24, 2014 and the tenants were required to vacate the rental unit by that date. Therefore, I proceed to consider whether the landlord is entitled to recover loss of rent for the month of January 2015.

Pursuant to the tenancy agreement, the tenants were obligated to pay rent of \$3,500.00 every month for the duration of their fixed term. The tenants breached their fixed term by failing to pay rent for December 2014. The tenants also failed to vacate the rental unit pursuant to the 10 Day

Notice to End Tenancy for Unpaid Rent that was served upon them by continuing to occupy the rental unit until January 11, 2015. I find the tenant's failure to pay rent and vacate the rental unit when required resulted in the landlord suffering a loss of revenue for the month of January 2015.

Although the landlord did not attempt to re-rent the unit, I am satisfied that the landlord's actions were reasonable in the circumstances and mitigated his losses considering the unit had been slated for demolition after the fixed term tenancy ended. I find that in obtaining the demolition permit in January 2015 and demolishing the building in February 2015 the landlord's actions spared the tenants from being responsible for rent for the months of February 2015 and March 2015.

In light of the above, I grant the landlord's request to recover from the tenant loss of rent for the month of January 2015 in the amount of \$3,500.00. I further award the landlord recovery of the \$50.00 filing fee paid for this Application. I also authorize the landlord to retain the tenant's security deposit in partial satisfaction of the amounts awarded to the landlord by way of this decision.

The landlord is provided a Monetary Order to serve upon the tenant and enforce as necessary in the net amount of: \$1,800.00 [calculated as \$3,500.00 + \$50.00 - \$1,750.00].

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$1,800.00 to serve and enforce upon the tenant.

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 20, 2015

Residential Tenancy Branch

