



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNR, MNSD, MNDC, FF

Introduction

The landlord applies for an order of possession and for a monetary award for unpaid rent, late fees and recover of the filing fee.

The tenant has vacated the rental unit, returning his key on June 4, 2015, but for retaining control of a storage locker. An order of possession is no longer required.

The landlord has filed subsequent evidence indicating that she wishes to claim damages for cleaning and repair to the suite. At hearing it was determined that the landlord has not properly, formally, advanced that claim in her application and that the tenant has not received fair warning of it and an opportunity to prepare for it. As a result, and as stated at hearing, the landlord's claim for damages for cleaning and repair are not properly part of this hearing. The landlord is free to apply to pursue that claim. In my view, no leave to do so is necessary.

At hearing the tenant acknowledged responsibility for items of the landlord's claim: for \$150.00 in late fees, \$470.00 in unpaid May 2015 rent and \$20.00 in unpaid rent from January and February 2015.

The sole remaining issue is whether or not the tenant is responsible for June rent or loss of rental income to the landlord from the month of June.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that the tenant is responsible for any rent or loss of rental income from June 2015?

Background and Evidence

The rental unit is a one bedroom apartment. The tenancy in this unit started in March 2001 though the tenant had been living elsewhere in the building for three and one half years.

The monthly rent for the last while had been \$710.00, due on the first of each month, in advance. The landlord holds a \$275.00 security deposit paid March 1, 2001.

In April the landlord served the tenant with a ten day Notice to End Tenancy for unpaid rent and a one month Notice to End Tenancy for cause. Those Notices were not disputed. The tenant vacated in the first few days of June and returned the key on June 4th.

The landlord's representative argues that the premises could not be rented out for June because of the tenant's overholding and because it was necessary to repair the damage he had caused.

The tenant says that the landlord was carrying out renovations, for which he was not responsible and so he should not be responsible for the fact that the premises was not rented during June.

Analysis

As stated at hearing, the question of whether the work done to the suite in June by the landlord was a result of the tenant damaging or not cleaning the suite or whether it is renovation work is a question that will be a central issue on the landlord's application for damages for cleaning and repair, which application the landlord's agent asserts will be definitely forthcoming.

The decision in that application will be definitive of whether or not and to what extent the landlord suffered loss of rental income.

I therefor defer the claim for June rent or loss of June rental income to that hearing. I do so by dismissing the landlord's claim for June rent with leave to reapply.

I grant the landlord a monetary award for the admitted items: \$150.00 in late fees, \$470.00 for the balance of June 2015 rent, \$20.00 for unpaid January and February 2015 rent, for a total of \$640.00 plus recovery of the \$50.00 filing fee.

I authorize the landlord to retain the \$275.00 security deposit and interest of \$16.90 in reduction of the amount awarded.

There will be a monetary order against the tenant for the remainder of \$398.10.

Though the tenant has passed the key for his lock on the storage area to another tenant, it is his lock and so he still retains control of it. He is responsible for returning the locker to the landlord. I direct that the tenant be given until July 7, 2015 to remove the lock after which the landlord may have the lock removed and make use of the locker.

Conclusion

The landlord's application is allowed in part.

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: June 25, 2015

Residential Tenancy Branch

