



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to a Landlord's Application for Dispute Resolution (the "Application") made on April 15, 2015. The Landlord applied for: an Order of Possession and a Monetary Order for unpaid rent; to keep the Tenants' security deposit; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the "Act"), regulation or tenancy agreement; and to recover the filing fee from the Tenants.

The Landlord appeared for the hearing with her husband. However, only the Landlord provided affirmed testimony during the hearing as well as written evidence prior to the hearing. There was no appearance by the Tenants during the 15 minute duration of the hearing. As a result, I turned my mind to the service of the documents by the Landlord.

The Landlord testified that she served each Tenant with a copy of the Application and the Notice of Hearing documents by registered mail on April 17, 2015. The Landlord provided the Canada Post tracking numbers and receipts into written evidence to support this method of service.

Section 90(a) of the Act provides that a document is deemed received five days after it is mailed. A party may not avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenants were deemed served with the required documents on April 22, 2015 pursuant to the Act. As a result, I continued to hear the undisputed evidence of the Landlord as follows.

At the start of the hearing the Landlord explained that the Tenants had vacated the rental unit at some point during the end of May 2015. However, the Tenants had left behind occupants who had also vacated the rental suite. The Landlord testified that she had changed the locks and had gotten possession back of the unit; however, the Landlord still requested an Order of Possession as she stated that these unknown occupants were coming back to the rental unit and breaking in.

Based on foregoing, I dismissed the Landlord's request for an Order of Possession as she had testified that the Tenants had vacated the rental suite, she had changed the locks, and had received control and possession back of the rental unit. I informed the Landlord that if she continues to have unknown parties break into the rental unit, this matter should be pursued with the police.

Issue(s) to be Decided

- Is the Landlord entitled to a Monetary Order for unpaid rent?
- Is the Landlord entitled to loss of rent for June, 2015?
- Is the Landlord entitled to keep the Tenants' security deposit in partial satisfaction of the monetary claim for unpaid rent?

Background and Evidence

The Landlord testified that this tenancy began on August 1, 2012 on a month to month basis. A written tenancy agreement was completed with the Tenants and rent at the start of the tenancy was \$800.00 payable on the first day of each month.

The Landlord testified that the Tenants were personally served with a Notice of Rent Increase (the "Rent Increase") on September 29, 2014 for the Tenants' rent to increase from \$800.00 to \$900.00 effective on January 1, 2015. This translated to an increase of \$20.00 per month.

The Landlord testified that the Tenants failed to pay the rent increase of \$20.00 for the months of January, February and March, 2015. By April 1, 2015 the Tenants were in \$60.00 rent arrears relating to the Rent Increase. The Landlord testified that the Tenants only paid \$400.00 for April 2015 rent. This left a balance for April 2015 rent in the amount of \$420.00.

The Landlord served the Tenants personally with a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice") on April 1, 2015. The Notice was provided into written evidence and shows an expected date of vacancy of April 12, 2015 for unpaid rent due on April 1, 2015.

The Landlord testified that on April 15, 2015 they made their Application to end the Tenants' tenancy. However, when it came to May 2015 rent, again the Tenants only paid \$400.00 in rent leaving an outstanding balance for May 2015 rent in the amount of \$420.00.

The Landlord testified that she now seeks to also claim loss of rent for June 2015 as she had not been able to re-rent the unit. As a result, the Landlord seeks to claim a total of **\$1,720.00** (\$60.00 + \$420.00 + \$420.00 + 820.00) in unpaid and lost rent from the Tenants.

Analysis

Section 26(1) of the Act requires a tenant to pay rent when it is due under the tenancy agreement. I have examined the Rent Increase and I find that it complied with Section 42 of the Act as it was issued in the approved form three months before the rent increase took effect.

The Rent Increase clearly informs the Tenants that it is payable under the Act. I accept the undisputed evidence of the Landlord that the Rent Increase was served to the Tenants and they have failed to pay the increased amount. I also accept that Landlord's testimony that the Tenants failed to pay full rent for April and May 2015. Therefore, the Landlord is entitled to unpaid rent for these months.

In relation to the Landlord's claim for loss of rent for June, 2015, I accept the Landlord's evidence that the Tenants vacated the rental suite at the end of May 2015 which did not give sufficient time for the Landlord to re-rent it for June 1, 2015. However, as the Landlord has now received full control and possession of the rental suite, the Landlord must make efforts to re-rent the unit at the earliest time possible pursuant to Section 7(2) of the Act.

Therefore, I have only considered the Landlord's claim for unpaid rent from half of June 2015 as the Landlord may be able to re-rent it for June 15, 2015. If the Landlord is not able to re-rent the unit after June 15, 2015, the Landlord is at liberty to re-apply for any subsequent rental loss incurred before mitigation is achieved. As the Landlord has been successful in this matter, the Landlord is also entitled to recover from the Tenants the \$50.00 filing fee, pursuant to Section 72(1) of the Act.

Based on the foregoing, I find the Landlord is entitled to unpaid rent for a total amount of **\$1,360.00** (\$60.00 + \$420.00 + \$420.00 + \$410.00 + \$50.00). As the Landlord already holds the Tenants' \$400.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act.

As a result, the Landlord is issued with a Monetary Order for the remaining balance of **\$960.00**. This order must be served on the Tenants and may then be enforced in the Provincial Court (Small Claims) as an order of that court. Copies of the order for service and enforcement are attached to the Landlord's copy of this decision.

Conclusion

The Tenants have failed to pay legal rent increases and rent during the tenancy causing the Landlord loss. Therefore, the Landlord may keep the Tenants' security deposit and is issued with a Monetary Order of \$960.00 for the remaining amount of unpaid rent and the filing fee.

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 02, 2015

Residential Tenancy Branch

