



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This was a hearing with respect to the landlord's application for a monetary award and for an order to retain the security deposit. The hearing was conducted by conference call. The landlord called in and participated in the hearing. The tenant has died since this proceeding was commenced. The executor of the tenant's estate attended the hearing.

Preliminary matter

This tenancy began in September, 2013. The tenant, Mr. L.G. suffered a stroke in early August, 2014. He was hospitalized. The tenant's nephew, Mr. O.K. was appointed to be the tenant's attorney in September, 2014. The landlord filed this application on January 21, 2015 to claim unpaid rent. She named Mr. O.K. as respondent and made no reference to the fact that he was acting on behalf of the tenant pursuant to a power of attorney. I was informed that since the landlord filed this application, on or about February 5, 2015, the tenant has died. Mr. O.K. was named in the tenant's will as the executor of his estate and he appeared in that capacity at the hearing of the landlord's application.

Because Mr. O.K. is not in his personal capacity, a party to this dispute, I have amended the landlord's application and the style of cause and I have removed Mr. O.K. as a respondent and substituted the tenant's estate and Mr. O.K. in his capacity as executor of that estate as the respondent in this proceeding.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain the tenant's security deposit in partial satisfaction of a monetary award?

Background and Evidence

The rental unit is one unit in a fourplex. The landlord testified that the tenancy began on September 1, 2013. The monthly rent was \$525.00 and the tenant paid a security deposit of \$262.50 at the start of the tenancy. The landlord's tenancy agreement incorrectly recorded the deposit amount as "\$252.60".

According to the landlord the tenant usually paid rent in cash in advance of the first of each month, however, he did not do so in August, 2014. He suffered a stroke at the beginning of the month and was hospitalized. Neighbouring tenants looked after the tenant's two cats after he was hospitalized. In September the tenant's nephew and his mother visited the rental property and began to look after the tenant's affairs. At this time the nephew, Mr. O.K. was appointed to be the tenant's attorney pursuant to a power of attorney.

The tenant's relatives, including Mr. O.K. did not finish removing the tenant's belongings from the rental unit until the last week of November. The landlord testified that in December she had to take the last of the tenant's belongings to the dump. The landlord said the rental unit was not cleaned; she claimed for \$125.00 said to be for five hours of cleaning that she performed. The landlord did not submit documents photographs to show the condition of the rental unit at the end of the tenancy. The landlord did not prepare a move-in or move-out condition inspection report.

The landlord claimed for unpaid rent for four months, from August to and including November.

Mr. O.K. submitted that the tenant had little financial resources, his funds were consumed paying for a long term acute care residence and he was suffering from dementia. He submitted that the landlord had an obligation to take steps to end the tenancy and did not do so. In a letter to the landlord he offered payment of one month's rent to satisfy the landlord's claim. The landlord did not accept the proposal.

Analysis

The evidence established that the tenant was hospitalised in August. I accept the landlord's testimony that rent was not paid for the month of August. It was not until September that the tenant's next of kin attended to check on the tenant and begin to deal with his affairs and his rental accommodation. The rental unit was not vacated and possession was not returned to the landlord until late in November.

The tenant's representative submitted that the landlord had an obligation to take steps to end the tenancy after the tenant became ill. I do not agree with his submission on this point. The landlord was aware that the tenant's family was looking after the tenant's affairs, including the process of sorting through his belongings and return vacant possession of the rental unit to the landlord. They stayed in the rental unit from time to time while they were sorting his belongings. She testified that she received assurances from them that the rent would be paid when they had access to the tenant's bank

account, but no payment was made. The landlord rejected an offer by the tenant's representative to accept the amount of one month's rent in full and final satisfaction of her claims for unpaid rent. At the hearing the tenant's representative suggested that the estate had no funds to pay the outstanding rent.

It was the obligation of the tenant or his estate to give notice to end the tenancy and to return vacant possession to the landlord. This did not occur until late in November. It was open to the landlord to serve the tenant with a Notice to End Tenancy for unpaid rent, but she was not obliged to do so. Had the landlord served a Notice to End Tenancy and taken steps to evict the tenant, he or his estate could have been responsible for unpaid rent, bailiff's charges and storage fees.

I find that the landlord is entitled to a monetary award for unpaid rent for the months of August, September, October and November in the total amount of \$2,100.00. In the absence of any photographs or condition inspection reports to show the condition of the rental unit, I do not allow the claim for cleaning charges.

Conclusion

The landlord is entitled to recover the \$50.00 filing fee for this application, for total award of \$2,150.0. I order that the landlord retain the security deposit of \$262.50 in partial satisfaction of this award and grant the landlord an order under section 67 for the balance of \$1,887.50. This order may be registered in the Small Claims Court and enforced as an order of that court

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: August 4, 2015

Residential Tenancy Branch

