



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding KAROLEENA INC
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

OPR, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for an order of possession and for a monetary order for unpaid rent, loss of income, the cost of cleaning, lock replacement and the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim.

The notice of hearing was served on the tenant on December 24, 2015 by registered mail. The tenant is a commercial company and the landlord mailed the notice of hearing to the company address. The landlord provided a tracking number. Despite having been served the notice of hearing, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

At the end of the hearing, I heard a recording that said that a participant with the same name as the respondent signed off the conference call. Upon review of the Telus report regarding attendees at the conference call, the report indicated that a third party joined the call shortly after the hearing began and left the call three minutes later. Since the phone lines were problematic that day, I did not hear the third party join the conference call and I am not sure whether the person who joined the call was unable to hear what was going on or simply chose to be a silent listener.

To avoid complications with applications for review in case the tenant was unable to attend due to circumstances beyond his/her control, this decision for a hearing that took place on January 05, 2016, was written on January 07, 2016 in order to give the tenant enough time to call the Residential Tenancy Branch Office, to let them know that he/she had problems with joining the conference call. As of this date, January 07, 2016, the tenant has not contacted the office.

At the start of the hearing, the landlord informed me that the tenant had moved out on or about June 16, 2015 without providing proper notice. Since the tenant has moved out, the landlord withdrew his application for an order of possession. Therefore, this hearing only dealt with the landlord's monetary claim.

Issues to be decided

Is the landlord entitled to a monetary order to recover unpaid rent, loss of income, the cost of cleaning, lock replacement and the filing fee and to retain the security deposit?

Background and Evidence

The tenancy started on March 01, 2015 for a fixed term of seven months that would end on September 30, 2015. The monthly rent was \$2,000.00 due in advance on the first of each month. Prior to moving in, the tenant paid a security deposit of \$1,000.00.

The landlord testified that on June 16, 2015, he received an email note from the tenant in response to the voice mail message left by him, regarding rent for June. In the note, the tenant acknowledged having received the message and apologized for the late reply. The tenant states in the note that he was no longer in need of the rental unit and that the unit was unoccupied for the month of June 2015. The last sentence on the email states "*This email is to advise you of our intention to end the tenancy agreement as of June 1st 2015.*"

The landlord stated that the tenant failed to pay rent for June 2015 and informed the landlord of his intentions to end the tenancy on June 16, 2015. The landlord stated that he made attempts to find a new tenant, but was unsuccessful. The unit was still vacant as of the date of the hearing which is approximately six months after the tenancy ended. The landlord did not file any documents to support his testimony that he had actively advertised and shown the rental unit to prospective tenants.

The landlord is applying for a monetary order for unpaid rent (\$2,000.00) and for loss of income (\$6,000.00) for the months of July to September 30, 2015, which is the end date of the fixed term

The landlord is also claiming \$250.00 for utilities, \$250.00 for cleaning, \$85.00 for laundering linen and \$300.00 for the cost of changing the locks. The landlord did not file any evidence by way of photographs, utility bills and invoices to support his monetary claim.

Analysis

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, I find that by not giving the landlord adequate notice to end the tenancy and by ending the tenancy prior to the end date of the fixed term, the tenant breached the tenancy agreement.

Based on the undisputed sworn testimony of the landlord and in the absence of evidence to the contrary, I accept the landlord's testimony in respect of his claim for unpaid rent. I find that the tenant owes rent for June 2015 in the amount of \$2,000.00.

The tenant provided notice on June 16, 2015 and therefore I find that the landlord did not have sufficient time to find a tenant for July 01 2015. Accordingly I find that the landlord is entitled to a loss of income for July 2015.

Section 7 of the Act provides:

A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Regarding the landlord's claim for loss of income for the balance of the fixed term, I find that the landlord did not provide evidence to support his testimony that he was actively looking for a tenant. In addition the unit is still vacant six months later which suggests that either the landlord is not looking for a tenant or is asking for rent that is over the market rate. Accordingly the landlord's claim for loss of income for the balance of the term is dismissed.

The landlord has also claimed for the cost of unpaid utilities, cleaning and the cost of laundry. The landlord did not provide any utility bills, photographs to show that the rental unit was left in a dirty condition or invoices to support the quantum of the expenses he incurred. In the absence of adequate evidence, the landlord's claim for the above items is dismissed.

Section 25 of the *Residential Tenancy Act* states that upon the request of a tenant at the start of a new tenancy the landlord must rekey or alter the locks so that keys or other means of access given to the previous tenant do not give access to the rental unit and pay all costs associated with the changes.

As per section 25, the landlord would be changing the locks if the new tenant requested it and would be doing so at his own cost. In addition, the landlord did not file an invoice to support the amount of \$300.00 that he is claiming. Accordingly the landlord's claim for the cost of changing locks is dismissed.

Since the landlord has proven a portion of his application I award the landlord the recovery of the filing fee in the amount of \$100.00.

Overall the landlord has established a claim for rent and loss of income in the amount of \$4,000.00 plus the filing fee of \$100.00. I order that the landlord retain the security deposit of \$1,000.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 of the *Residential Tenancy Act* for the balance due of \$3,100.00. This order may be filed in the Small Claims Court and enforced as an order of that Court.

Conclusion

I grant the landlord a monetary order for **\$3,100.00**.

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: January 06, 2016

Residential Tenancy Branch

