



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, FF

Introduction

This hearing dealt with an application by the landlord pursuant to the *Residential Tenancy Act* for a monetary order for loss of income, cost of cleaning and repairs and for the recovery of the filing fee.

The landlord testified that on July 11, 2018 he served the tenant with the notice of hearing by registered mail to the rental unit. The tenant moved out of the rental unit on August 02, 2018 and therefore would have received the notice of hearing package prior to moving out. 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.

The landlord testified that the tenant did not give him a forwarding address and asked him to communicate by email. The landlord sent the tenant additional evidence by email and the tenant responded to the email. The landlord filed a copy of the tenant's response to the email containing evidence of photographs and invoices. Since the tenant requested communication by email and responded to the landlord's email, I find that the tenant is deemed to have been served with the landlord's evidence package.

Issues to be decided

Is the landlord entitled to a monetary order for loss of income; cost of cleaning and repairs and for the recovery of the filing fee?

Background and Evidence

The landlord testified that the tenancy started on September 01, 2017 for a fixed term of one year. The end date of the fixed term was September 01, 2018.

A copy of the tenancy agreement was filed into evidence. The monthly rent was \$650.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$325.00 and a pet deposit of \$150.00.

The landlord testified that on July 01, 2018, the tenant failed to pay rent. On July 02, 2018, the tenant informed the landlord that she would be moving out by the end of July. On July 09, 2018, the tenant sent the landlord \$175.00 by e-transfer and informed the landlord that he could keep the total deposits of \$475.00 to make up the balance of rent for July 2018.

The landlord testified that he attempted to find a tenant for August 01, 2018 but was unsuccessful. The tenant moved out on August 02, 2018. The landlord is claiming \$650.00 for loss of income for August 2018.

The landlord stated that the tenant left the unit in a condition that required cleaning and repair. The landlord filed copies of photographs and invoices to support his claim of \$435.65.

Analysis

Section 45 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 is not earlier than one month after the date the landlord receives the notice, is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and is the day before the day in the month that rent is payable under the tenancy agreement.

Based on the sworn testimony of the landlord and in the absence of contradictory evidence, I find that, on July 02, 2018, which is after the day rent is due, the tenant gave notice to end the tenancy effective July 31, 2018 which is prior to the end date of the fixed term. By ending the tenancy prior to the end date of the fixed term, the tenant breached the tenancy agreement. The landlord is claiming a loss of income that resulted from this breach.

Section 7 of the *Residential Tenancy Act* states that a landlord who claims compensation for loss that results from the tenant's non-compliance with the *Act* or their tenancy agreement must do whatever is reasonable to minimize the loss.

In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. In this case, in order to minimize the loss, the landlord had to make efforts to re-rent the unit.

The landlord testified that he had some showings but was unsuccessful in finding a tenant for August 01, 2018. Therefore the landlord is entitled to recover any loss of income that he suffered due to a breach of the tenancy agreement by the tenant. Accordingly, I award the landlord \$650.00 which is equal to the loss of income that he suffered in August 2018.

I find that the landlord has filed adequate evidence by way of photographs and invoices to support his claim for \$435.65 and accordingly I award the landlord this amount.

The landlord has proven his claim and is therefore entitled to the recovery of the filing fee of \$100.00

The landlord has established a claim in the total amount of \$1,185.65. I grant the landlord an order under section 67 of the *Residential Tenancy Act* for this amount. 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 of **\$1,185.65**.

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: November 02, 2018

Residential Tenancy Branch