Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the Landlord to obtain a Monetary Order for damage to the unit, site, or property, for unpaid rent or utilities, and to recover the cost of the filing fee from the Tenant for this application.

The Landlord affirmed that the Tenant was served the notice of dispute resolution hearing documents by registered mail on June 1, 2012. Canada Post tracking information was provided in the Landlord's testimony and the Landlord submitted that the package was refused by the Tenant and was returned by Canada Post.

The *Residential Tenancy Policy Guideline # 12* provides that if registered mail is refused or deliberately not picked up, service continues to be deemed to have occurred on the fifth day after mailing, in accordance with section 90 of the Act. Therefore, I find the Tenant was sufficiently served notice of this proceeding on June 6, 2012, pursuant to section 90 of the Act.

The Landlord appeared at the teleconference hearing and provided affirmed testimony. No one appeared on behalf of the Tenant. As I found the Tenant to be sufficiently served notice of this proceeding I continued the hearing in her absence. A summary of the testimony is provided below and includes only that which is relevant to the matters before me.

Issue(s) to be Decided

1. Has the Landlord met the burden of proof to obtain a Monetary Order?

Background and Evidence

The Landlord submitted into evidence copies of: the tenancy agreement; move out condition inspection report dated August 16, 2011; a notice to end tenancy issued by one of the tenants on May 30, 2011; a 10 Day Notice to end tenancy for unpaid rent

dated August 8, 2011; copies of receipts for work performed on the unit; and a letter issued to the Tenant dated March 12, 2012. There was no record of a move-in condition report being completed at the start of this tenancy.

The Landlord confirmed the Tenant and her daughter entered into a month to month tenancy as co-tenants which began on June 1, 2011. Then on June 6, 2011, the Landlord received a letter from the daughter dated May 30, 2011 which states she was ending the tenancy effective July 1, 2011. The remaining Tenant signed a request for transfer on June 6, 2011 seeking a smaller unit for herself and her grandson.

The Landlord stated that rent was not paid for July or August 2011.The Landlord stated he did not have any records to indicate the remaining Tenant was relocated. A 10 Day Notice was not served to the Tenant until August 9, 2011 when it was placed in the Tenant's mail slot, seeking rent that was due on July 1, 2011 and August 1, 2011.

The Landlord stated that he could not confirm if the Tenants were still occupying the unit in July 2011. He did however note that after the 10 Day Notice was issued August 9, 2011 they attended the unit and found it abandoned so the move out report was completed on August 16, 2011.

The Landlord is seeking unpaid rent for July and August 2011, $112.00 for cleaning up the rental unit, $179.20 for carpet cleaning, and $56.00 to clean the patio and cut the grass. The Landlord confirmed that the tenancy agreement did not stipulate that the Tenants were required to maintain the yard or cut the grass.

Analysis

When a landlord makes a claim for damage or loss the burden of proof lies with the landlord to establish their claim. To prove a loss the applicant must satisfy the following four elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the other party in violation of the Act, Regulation or tenancy agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Section 45(1) of the Act provides that a tenant may end a periodic 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 and is the day before the day in the month that rent is payable.

In this case the Landlord received the Tenant's written notice to end this tenancy on June 6, 2011 and rent was payable on the first of each month. Therefore, this tenancy would have ended **July 31, 2011** in accordance with section 45(1) of the Act.

The evidence supports that no rent was paid for July 1, 2011, and the tenancy was not scheduled to end until July 31, 2011; therefore I award the Landlord **$469.00** as unpaid rent for July 2011.

There is no evidence of a 10 Day Notice being issued prior to August 9, 2011. Also, there is no evidence that the Landlord contacted the Tenant when July 1, 2011 rent remained unpaid and there is no evidence to support when the Tenant(s) actually vacated the unit.

Based on the foregoing, I find the Landlord did not mitigate their loss for August 2011 rent as the Tenants may have vacated the property in July 2011 and if the Landlord had done their due diligence they may have been able to re-rent the unit for August 2011. Therefore, I dismiss the Landlord's claim for August 2011 rent.

The *Residential Tenancy Policy Guideline # 1* provides that at the beginning of a tenancy the landlord is expected to provide the tenant with clean carpets in a reasonable state of repair. It further stipulates that generally, at the end of the tenancy the tenant will be held responsible for steam cleaning or shampooing the carpets after a tenancy of one year. In this case the tenancy was in effect for only two months (June and July 2011).

In the absence of a move in condition inspection report, and after considering the above, I find there to be insufficient to meet the burden to prove the Tenant is responsible for carpet cleaning and the claim is dismissed.

The Landlord claims for $56.00 to cut the lawn and clean the patio area. There is no indication in the tenancy agreement that the Tenant agreed to maintain the yard and in the absence of a move in condition inspection report I find there to be insufficient evidence to support the Tenant was responsible for the condition of the patio. Therefore, the claim of $56.00 is dismissed.

The Landlord claims $112.00 for four hours cleaning to the rental unit. There is no evidence to support the condition of this unit at the onset of this two month tenancy, nor is there any evidence to indicate the Landlord did due diligence in contacting the Tenant when July 1, 2011 rent remained unpaid. Furthermore, there is no evidence to prove the Tenant was issued two opportunities to attend a condition inspection or a final opportunity to attend. Therefore, in this circumstance I find there to be insufficient evidence to support the claim of $112.00 and it is hereby dismissed.

The Landlord has only been partially successful with their application; therefore I award partial recovery of the filing fee in the amount of **$25.00**.

Conclusion

The Landlord has been awarded a Monetary Order in the amount of **$494.00** ($469.00 + $25.00). This Order is legally binding and must be served upon the Tenant.

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: July 30, 2012.

Residential Tenancy Branch