



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes FF MNDC MNR MNSD

Introduction

This hearing dealt with an application by the landlord for a monetary order for unpaid rent, interest on unpaid rent and damage to the rental unit and furnishings. The landlord also requested recovery of the filing fee from the tenants. Although personally served with the hearing package by way of process server at 1:15 p.m. on July 4, 2012 the tenants failed to attend the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to the requested orders?

Background and Evidence

This tenancy originally began on March 15, 2009 pursuant to a tenancy agreement that stipulated a one year term ending on March 14, 2010. The parties then entered into a second tenancy agreement which stipulated a 6 month term ending on September 14, 2010. The rent throughout the tenancy was \$1,350.00 per month payable bi-weekly. A security deposit of \$650.00 and pet damage deposit of \$150.00 were paid at the start of the original tenancy. The rental unit was partially furnished. An addendum to the tenancy agreement (which was signed by both tenants) stipulated, amongst other things, that the house was a "non-smoking house" and that interest would accrue on any outstanding rent at the rate of 32% per annum compounded daily.

The tenants began falling behind in the rent in early 2010 but asked the landlord for time to catch up and even convinced the landlord to allow them to sign a new tenancy agreement. The landlord believed that the tenants would ultimately bring the rent up to date. However, the tenants did not bring the rent up to date so the landlord served them with a 10 Day Notice to End Tenancy on July 17, 2010. The tenants then vacated the rental unit about two days later.

The landlord claims that the tenants smoked in the house in violation of the lease and that the house and furnishings smelled heavily of cigarettes. The landlord claims that it took time to clean the house up and get rid of the smell of smoke and that they were able to re-rent it for October 1, 2010.

The tenants never provided a forwarding address to the landlord. The landlord hired a skip tracer and ultimately located the tenants in June 2012.

Analysis

The landlord has made a monetary claim against the tenants comprised of the following:

Unpaid rent up to Jan 2010	\$1,675.00
Unpaid rent for May 2010	\$675.00
Unpaid rent for June 2010	\$1,350.00
Unpaid rent for July 2010	\$1,350.00
Lost income for August 2010	\$1,350.00
Lost income for Sept 2010	\$675.00
Interest on unpaid rent (as of June 2, 2012)	\$4,463.41
Lost key	\$50.00
Damaged furniture (half value)	\$2,074.99
Cleaning costs	\$828.42
TOTAL	\$14,491.82

The landlord provided receipts and invoices in support of all the claims made and copies of cheques that were returned to the landlord due to insufficient funds. I am satisfied based on these documents and the landlord's testimony that the landlord has proved the claims for damage, cleaning and unpaid rent.

This leaves the question of the accrued interest. In this regard, I have considered the contents of Residential Tenancy Policy Guideline No. 8 which deals with "unconscionable terms". While I am concerned that the amount claimed as interest is very large and that an argument might have been made that the term in the addendum relating to interest accrual was unconscionable, the tenants did not attend the hearing to make this argument. I refer to the Guideline which states that the burden of proving a term is unconscionable is on the party alleging unconscionability. In the present case, unconscionability has not been proved because no one appeared to make the argument. Accordingly, I find that the landlord is entitled to the interest claimed.

Conclusion

I find that the landlord has established a monetary claim in the amount of \$14,491.82.

I further find that the landlord is entitled to recover the \$100.00 fee for this application from the tenants.

I therefore order that the landlord retain the deposit and interest (\$0.00) of \$800.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$13,691.00.

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*.