



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 unpaid rent, loss of income and for the recovery of the filing fee.

The landlord testified that he had served the tenant with the notice of hearing and the evidence package, in person at his place of business, in the presence of a witness. The landlord also mailed the package to the tenant's forwarding address. The landlord stated that he tracked the item on line and it indicates that the tenant had refused to accept the item. 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.

Issues to be decided

Is the landlord entitled to a monetary order for unpaid rent, loss of income and the filing fee?

Background and Evidence

The landlord testified that the tenancy started on January 01, 2013 for a fixed term of 15 months. The monthly rent was \$2,400.00 payable on the first of each month. The landlord filed a copy of the tenancy agreement into evidence.

The landlord stated that the tenant failed to pay rent for February 2013 and on February 04, 2013; the landlord served the tenant with a ten day notice to end tenancy. The tenant did not dispute the notice nor did he pay rent. The tenant moved out on February 23, 2013 without notice.

The landlord stated that he started advertising for a new renter on line as soon as the tenant moved out. The landlord did not file any evidence to support his attempts to find a new tenant.

The landlord stated that he had two to three showings per month and found a tenant for June 01, 2013. The landlord is claiming rent for February and loss of income for the months of March, April and May 2013.

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.

By ending the tenancy prior to the end date of the fixed term, the tenant breached the agreement and therefore the landlord is entitled to damages in an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement.

As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenancy could legally have ended the tenancy. In all cases, the landlord's claim is subject to the statutory duty to mitigate the loss by making attempts to re-rent the unit.

Section 7(2) of the *Residential Tenancy Act*, states that a landlord who claims compensation for loss that results from the tenant's non compliance with the tenancy agreement must do whatever is reasonable to minimize the loss.

Based on the undisputed testimony of the landlord, I find that the tenant moved out on February 23, 2013 without paying rent for February and without providing proper notice to the landlord. The landlord testified that he made efforts to re rent the unit but did not file any evidence to support his testimony. I find that the tenant is responsible for rent for February.

Moving out on February 23, 2013, without notice to the landlord caused the landlord to suffer a loss of income for March 2013. Therefore I find that the tenant is responsible for this loss and must pay the landlord \$2,400.00 which is the loss that the landlord suffered in March 2013.

The landlord did not file adequate evidence to show his efforts to find a tenant for April and May 2013. Even though the tenancy was a fixed term tenancy, I find that the tenant is not responsible for the rent beyond March 2013 because there is insufficient evidence to support efforts made by the landlord to mitigate his losses.

Since the landlord has proven his case, he is entitled to the recovery of the filing fee of \$50.00.

Overall the landlord has established a claim of \$4,850.00.00. 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 **\$4,850.00.**

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: October 23, 2013

Residential Tenancy Branch

