



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF, SS

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord for a Monetary Order for: damages to the rental unit; unpaid rent or utilities; to keep the Tenant’s security deposit; money owed or compensation for loss or damage under the *Residential Tenancy Act* (the “Act”); to serve documents in a different way than required by the Act; and to recover the filing fee.

The Landlord appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence prior to the hearing. There was no appearance for the Tenants during the hour long hearing and no submission of written evidence by them prior to the hearing.

Preliminary Issues

As the Tenants failed to appear for the hearing, I focused my attention to the service of the Application and the Notice of Hearing documents by the Landlord to the Tenants.

The Landlord testified that he had served the male Tenant (“CS”) by registered mail to the address that he had been provided by CS at the end of tenancy as his forwarding address.

The Landlord testified that he had been informed by CS that he and his wife, the female Co-tenant (“MS”), had split up and that she was no longer residing with him. As a result, the Landlord made some enquiries to locate MS and discovered that she was advertising part of a property she was living in for rental online and that the advertisement contained her cell phone number. The Landlord testified that he attended the rental suite she was advertising and when he knocked on the door it was answered by MS’s father. The Landlord testified that he saw the Tenant inside but the father

refused to take the documents. As a result, the Landlord register mailed the documents to MS using this address.

The documents were mailed to each of the Tenants on February 20, 2014 and the Landlord provided a copy of the Canada Post tracking numbers relating to each Tenant as evidence for this method of service. The Landlord testified that they had been claimed by CS but not by MS.

Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail or use this as grounds for a review. As a result, based on the undisputed evidence of the Landlord in relation to the service of the hearing documents, I find that the CS was deemed served with the required documents on February 25, 2014.

I also find that in relation to the Landlord's portion of the Application to serve documents in a different way to the Act, I accept the undisputed testimony of the Landlord that he saw the Tenant residing in the location where she was the contact person on an advertisement for the rental of a portion of the property. As a result, I am satisfied that MS was served pursuant to section 71(2) (b) of the Act. Based on the foregoing, I find that MS was deemed served on February 25, 2014 with the Application and hearing documents by registered mail.

The second preliminary issue that I dealt with was the Landlord's amendment to his Application on May 16, 2014 to include a claim for damages to the rental suite. The Landlord served each Tenant with a copy of the amended Application on May 20, 2014. However, I find that the Landlord did not serve the amended Application to the Tenants within the time limits stipulated by section 59(3) of the Act. Therefore, I have not considered the Landlord's claim for damages to the rental suite, but do give the Landlord leave to re-apply for these damages.

The third preliminary issue I dealt with relates to a hearing that was held on January 20, 2014 by a different arbitrator, the file number for which appears on the front page of this decision. The hearing dealt with the Landlord's Application for the same issues that are before me at this hearing. However, the Landlord explained that when he made the Application for the previous hearing on January 20, 2014, he made a spelling error in CS's last name and did not realize this until a written decision had been issued. The written decision for the January 20, 2014 hearing explained that the Landlord had not provided evidence regarding the service of the hearing documents to MS and therefore he was provided with leave to make an Application against MS; the written decision dated January 21, 2014 was also accompanied with a Monetary Order for unpaid rent.

However, the Landlord explained that as the spelling of CS's last name is incorrect on the Monetary Order issued, he now seeks to obtain another order in the correct name of the Tenant. Based on the foregoing, I proceeded to hear the Landlord's Application for unpaid rent as the Monetary Order issued on January 21, 2014 will not be enforceable.

Issue(s) to be Decided

As a result, I carefully considered the undisputed affirmed testimony and the written evidence of the Landlord in this decision as follows.

- Is the Landlord entitled to three months of unpaid rent?
- Is the Landlord allowed to keep the Tenants' security deposit in partial satisfaction of the Landlord's claim?

Background and Evidence

This tenancy began in December, 2009 for a fixed term of two years after which the tenancy continued on a month to month basis. The Landlord collected a \$2,200.00 security deposit from the Tenants which he still retains. At the start of the tenancy the rent amount was established as \$4,500.00; however, this was decreased to \$4,200.00 after three years into the tenancy. Rent was payable on the first day of each month and the Landlord testified that a written tenancy agreement was completed, although not provided for this hearing.

The Landlord testified that the Tenants had been habitually paying rent late throughout the tenancy and in November, 2013, the Tenants failed to pay rent, after which they were issued with a 10 day Notice to End Tenancy for Unpaid Rent or Utilities (the "Notice"). The Landlord provided a large amount of e-mail evidence where the Landlord made requests for the unpaid rent from CS and attempted to work with the Tenants for them to pay rent.

The Landlord testified that by the start of February, 2014, the Tenants had moved out but had also failed to pay rent for December, 2013 and January, 2014. The Landlord maintained that \$12,600.00 still remains owing from this tenancy.

Analysis

I accept the undisputed testimony of the Landlord as well as the written evidence in the form of e-mail exchanges with CS, that by the date the Tenants had vacated the rental suite, they owed the Landlord for three months rent in the amount of **\$12,600.00** and

that this is still unpaid by the Tenants. Therefore, I find that the Landlord is entitled to a Monetary Order for unpaid rent.

As the Landlord has been successful in this matter, the Landlord is also entitled to recover the **\$100.00** Application filing fee pursuant to section 72(1) of the Act. Therefore, the total amount payable by the Tenants to the Landlord is \$12,700.00.

As the Landlord already holds the Tenants' \$2,200.00 security deposit, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to section 38(4) (b) of the Act. As a result, the Landlord is awarded \$10,500.00.

Conclusion

For the reasons set out above, I grant the Landlord a Monetary Order pursuant to section 67 of the Act in the amount of **\$10,500.00**. This order must be served on the Tenant and may then be filed in the Provincial Court (Small Claims) and enforced as an order of that court if the Tenant fails to make payment in accordance with the Landlord's instructions.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under section 9.1(1) of the Act.

Dated: June 02, 2014

Residential Tenancy Branch

