



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, OPB, MNR, MNDC, MNSD, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. An Order of Possession - Section 55;
2. A Monetary Order for unpaid rent - Section 67;
3. A Monetary Order for compensation - Section 67;
4. An Order to retain the security deposit - Section 38; and
5. An Order to recover the filing fee for this application - Section 72.

I accept the Landlord’s evidence that the Tenant was served with the application for dispute resolution and notice of hearing in person on April 26, 2016 in accordance with Section 89 of the Act. The Tenant did not participate in the conference call hearing. The Landlord was given full opportunity under oath to be heard, to present evidence and to make submissions. The Landlord confirmed that the Tenant has moved out of the unit and that the Landlord no longer requires an order of possession.

Issue(s) to be Decided

Is the Landlord entitled to unpaid rent?

Is the Landlord entitled to compensation for a breach of the fixed term tenancy?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on June 15, 2015 on a fixed term to end June 15, 2016. Rent of \$2,000.00 was payable on the 15th of each month. At the outset of the tenancy the Landlord collected \$1,000.00 as a security deposit.

On April 15, 2016 the Tenant gave notice to end the tenancy for May 1, 2016 and moved out on that date. The Tenant did not pay any rent on April 15, 2016. The Landlord served the Tenant with a 10 day notice to end tenancy for unpaid rent by giving this notice to the Tenant in person on April 18, 2016. The Landlord claims unpaid rent of \$2,000.00.

On April 15, 2016 the Landlord advertised the unit online as being available for May 1, 2016 at a rental rate of \$2,500.00. The unit has not been rented to date. The Landlord claims lost rental income of \$2,000.00 for the period May 15 to June 15, 2016.

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement. As the Tenant was required to pay a full month's rent in advance on April 15, 2016 and as the Tenant failed to pay this full month's rent I find that the Landlord is entitled to unpaid rent of **\$2,000.00**.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Although the Tenant breached the fixed term tenancy by ending the tenancy earlier than provided for, as the Landlord advertised the unit for rent at a significantly higher rent, I find that the Landlord failed to take any reasonable step to reduce the lost rental income being claimed and I therefore dismiss this claim.

As the Landlord's application had merit I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,100.00**. Deducting the **\$1,000.00** security deposit plus zero interest from the entitlement leaves **\$1,100.00** owed by the Tenant to the Landlord.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,000.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining amount of **\$1,100.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

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: May 26, 2016

Residential Tenancy Branch