



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, 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. A Monetary Order for unpaid rent – Section 67;
2. An Order to retain all or part of the security deposit; Section 38 and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on October 1, 1993. Rent of \$389.00 is payable monthly. At the onset of the tenancy the Landlord collected a security deposit of \$100.00. The Landlord states that the Tenant went into the hospital in November 2011 and passed away on November 28, 2011. The Landlord states that although the Landlord was aware of the Tenant's illness and death, no notice was provided by the Tenant or the Tenant's estate to end the tenancy and the unit was vacated on November 30, 2011. The Landlord states that a new tenant was secured from the waiting list and the unit was rented for December 15, 2011. The Landlord states that this was the earliest date any of the waiting list applicants could move into the unit. The Landlord states that the Tenant's rent was processed for December 2011 but was returned for insufficient funds. The Landlord claims a pro-rated amount of rent for December in the amount of \$194.50 plus

\$20.00 for the returned cheque. The Landlord states that the tenancy agreement does not include provision for the payment of a late or NSF fee.

The Tenant states that the Landlord was verbally informed on November 15, 2011 that the Tenant would not be returning to the unit and that the unit would be vacated by November 30, 2011. The Tenant argues that no other notice was required and that the death of the Tenant nullifies the tenancy agreement.

Analysis

Section 1 of the Act defines “tenant” to include the estate of a deceased tenant. As such, I find that the obligations of the Tenant continue with the Tenant’s estate.

Section 45 of the Act requires a tenant to provide a month’s notice to end a tenancy and Section 52 of the Act requires such notice to be, inter alia, in writing. Given the undisputed evidence of the Parties, I find that the Tenant failed to give a month’s notice in writing to end the tenancy. I further find that given a lack of notice to end the tenancy, rent for December 2011 was due and payable to the Landlord. As the Landlord was able to reduce the rent by finding another tenant by December 15, 2011, I find that the Landlord is entitled to **\$194.50** in unpaid rent. As the tenancy agreement does not include provision for a NSF fee, I dismiss the Landlord’s claim for such fee. The Landlord is also entitled to recovery of the **\$50.00** filing fee for a total entitlement of **\$244.50**. Setting the security deposit plus interest of **\$122.74** off the entitlement leaves **\$121.76** owing to the Landlord.

Conclusion

I order that the Landlord retain the **deposit** and interest of \$122.74 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the balance due of **\$121.76**. 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: February 22, 2012.

Residential Tenancy Branch