



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes:

MNR, MNSD, FF

Introduction

This hearing was scheduled in response to the Landlord's Application for Dispute Resolution, in which the Landlord has made application for a monetary Order for unpaid rent, to retain all or part of the security deposit, and to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to ask relevant questions, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to a monetary order for unpaid rent; to retain all or part of the security deposit; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Landlord and the Tenant agree that this tenancy began on April 01, 2007; that they had a written tenancy agreement; that the Tenants were required to pay monthly rent of \$1,400.00 at the end of the tenancy; that electricity is not included in the monthly rent; and that the Tenants paid a security deposit of \$700.00 on March 31, 2007; and that the Tenants paid a pet damage deposit of \$700.00 on March 31, 2007.

The Landlord and the Tenant agree that on November 14, 2008 the Tenants provided the Landlord with written notice, via email, of their intent to vacate the rental unit on December 15, 2008. The parties agree that on November 16, 2008 they had a telephone conversation, in which they mutually agreed that the tenancy would end on December 31, 2008.

The Landlord submitted a copy of a decision made by A. Lafleur, a Dispute Resolution Officer, on December 19, 2008. In her decision, Ms. Lafleur determined that this

Residential Tenancy Branch
Ministry of Housing and Social Development

tenancy ended on December 12, 2009 by virtue of a Notice to End Tenancy for Unpaid Rent that had been served on the Tenants. The Landlord and the Tenant agree that the Tenants vacated the rental unit on December 16, 2008.

The Landlord and the Tenant agree that a condition inspection report was not completed at the beginning of this tenancy. The Landlord submitted a copy of a Condition Inspection Report that was completed on January 05, 2009, after the tenancy had ended. The Tenants provided a forwarding address on the Condition Inspection Report.

In Ms. Lafleur's decision of December 19, 2008, she determined that the Landlord was entitled to compensation for unpaid rent for December of 2008. The Landlord is now seeking compensation, in the amount of \$1,400.00, for loss of revenue from the month of January. The Landlord contends that he is entitled to this compensation because the Tenant did not give proper written notice of his intent to vacate the rental unit on December 31, 2009. He stated that he filed this Application for Dispute Resolution, in part, because of Ms. Lafleur's written comment, in which she cautions the Tenants that they may be liable for loss of revenue for January of 2009. There is nothing in Ms. Lafleur's decision that indicates that she was aware that the parties had entered into a verbal agreement to end this tenancy on December 31, 2008.

The Landlord and the Tenant agree that the Tenants ended hydro service to the rental unit on December 16, 2008. The Landlord stated that hydro service reverted to his name on December 17, 2008. He submitted a copy of a hydro bill, for the period between December 17, 2008 and January 22, 2009, in the amount of \$253.98. The Landlord is claiming compensation, in the amount of \$253.98, for the cost of hydro during this period.

The Tenant argued that he should not be held responsible for any hydro expenses incurred between December 17, 2008 and January 22, 2009, as he did not reside in the rental unit during this period.

Analysis

I find that on November 16, 2008 the Landlord and the Tenants entered into a verbal agreement to end this tenancy on December 31, 2008. Both parties acknowledge making this verbal agreement and both parties were bound by the agreement. In other words, neither party could revoke the agreement without the consent of the other party. Although the Notice to End Tenancy sent via email to the Landlord on November 14, 2008 did not strictly comply with the *Residential Tenancy Act (Act)*, the verbal agreement they made on November 16, 2008 was, in my view, sufficient and adequate notice. I find that the Landlord had over six weeks to find new tenants for the rental unit

Residential Tenancy Branch
Ministry of Housing and Social Development

and I can not conclude that insufficient notice that the tenancy was ending resulted in the Landlord losing rental income for January of 2009. On this basis, I dismiss the Landlord's application for compensation for loss of revenue from January of 2009.

I find that the tenancy agreement required the Tenants to pay for the hydro they used while they occupied the rental unit. I find no reason to conclude that they were responsible for paying for hydro service at the rental unit after the tenancy ended. On this basis, I dismiss the Landlord's application for compensation for hydro costs incurred between December 17, 2008 and January 22, 2009.

I find that the Landlord's application has been without merit, and I dismiss his application to recover the fee from the Tenant for filing this Application for Dispute Resolution.

Conclusion

As the Landlord has not established a monetary claim, I am unable to grant his application to retain the security deposit and pet damage deposit.

Both parties are advised that the Landlord has the right, pursuant to section 38(3) of the *Act*, to retain from a security deposit or a pet damage deposit an amount that the director has previously ordered the Tenants to pay to the Landlord if it remained unpaid at the end of the tenancy. If the Tenants have paid all the money that the director previously order the Tenants to pay to the Landlord, the Landlord is obligated to return the security deposit and the pet damage deposit to the Tenants in accordance with the *Act*.

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 15, 2009.

Dispute Resolution Officer