



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes

For the landlord – MNR, MNSD, FF

For the tenant - MNSD

Introduction

This decision deals with two applications for Dispute Resolution, one brought by the tenants and one brought by the landlord. Both files were heard together. The landlord seeks a Monetary Order for unpaid rent, to recover the filing fee and to keep the tenants security deposit. The tenants seek the return of their security deposit.

I find that both parties were properly served pursuant to s. 89 of the *Act* with notice of this hearing.

Both parties appeared, gave affirmed testimony, were provided the opportunity to present their evidence orally, in written form, documentary form, to cross-examine the other party, and make submissions to me. On the basis of the solemnly affirmed evidence presented at the hearing I have determined:

Issues(s) to be Decided

- Are there arrears of rent and if so, how much?
- Is the landlord entitled to keep all or part of the security deposit and interest?
- Is the landlord entitled to recover filing fees from the tenants for the cost of the application?
- Are the tenants entitled to receive double the security deposit back?



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Background and Evidence

This tenancy started on June 24, 2009 and ended on June 26, 2009. Rent for this unit was \$625.00 per month and was due on the first of each month. This was a month to month tenancy and the tenants paid a security deposit of \$312.50 on June 22, 2009.

The landlords' agent testifies that the tenant moved into the rental unit and made a complaint about excessive noise coming from a neighbouring unit. The landlords took immediate action to prevent this disturbance occurring again and issued the offending tenant with a breach letter. This tenant was then moved to another residence out of the building. The landlord claims the tenant moved out two days after moving in and did not give any notice to end the tenancy. The landlord has since re-rented the unit on July 14, 2009 and seeks a loss of income for the beginning of July for 14 days to an amount of \$282.25 (14 days X \$20.16 a day). The landlord has applied to keep part of the tenant's security deposit to recover this unpaid rent.

The tenants testify that they asked the landlord before renting the unit if it was a quiet building as the tenant occupying the unit needed to sleep soundly due to his driving job. The tenant's state that they were assured it was a quiet place and that no one had complained about any noise. On the tenants second night he was woken by a loud party next door and could not contact the landlord on the after hours number provided. The tenant decided to move from the building and requested the return of their security deposit. The tenants disputes the landlords claim that they owe any rent for July, 2009 as the tenant had to move because of the noise.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. I find the tenants had entered into a month to month tenancy agreement with the landlords and as such this agreement would have required one month's written notice to end the agreement pursuant to section 45 of the *Act*. The tenants did not give this notice therefore I find the landlords' application to recover a loss of income for 14 days in July to the amount of \$282.25 is upheld. The landlord is entitled to recover this amount from the tenant's security



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deposit pursuant to section 38 of the *Act*. As the landlord has been successful with their claim they are entitled to recover the \$50.00 filing fee for this application pursuant to section 72(1) of the *Act*. The landlords are entitled to a Monetary Order for the balance due of \$19.75.

With regard to the tenants claim to recover their security deposit I find that the landlord took the required action to prevent an occurrence of the noise issues and the tenant moved out without any notice period. Therefore, the tenants are not entitled to recover their security deposit and their application is dismissed.

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for \$19.75. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The tenant's application is dismissed, without leave to reapply.

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: November 03, 2009.

Dispute Resolution Officer