

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for a monetary order for unpaid rent, to retain the security deposit in partial satisfaction of the claim, and to recover the filing fee from the tenants for the cost of this application.

During the hearing, it was disclosed that the named female respondent was not a tenant, but had written a letter to the landlords on behalf of the tenant. Therefore, the landlords named her as a respondent. I hereby dismiss all claims against the female respondent named in this dispute.

Despite being served with the Landlord's Application for Dispute Resolution and notice of hearing documents by registered mail on March 25, 2010, the tenant did not attend the conference call hearing.

Two agents appeared at the conference call hearing on behalf of the landlord company, and both gave affirmed evidence.

Issues(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to retain the security deposit in partial satisfaction of the claim?

Background and Evidence

This month-to-month tenancy began on December 15, 2009 and ended on January 16, 2010. Rent in the amount of \$1,519.70 was payable in advance on the 1st day of each

month, and the tenant paid a prorated amount of rent for the 1st month of the tenancy. The landlords also collected a security deposit from the tenant on November 24, 2009 in the amount of \$500.00. The rental unit is an apartment which is subsidized and rent is calculated according to income.

On January 1, 2010 the tenant paid the prorated rent for the month of December, 2009 and the full amount for the month of January, 2010 by way of pre-authorized electronic debit.

The landlords testified that on January 9, 2010 the tenant gave written notice to move on February 15, 2010.

The landlords subsequently received a letter dated March 20, 2010 from the tenant's daughter requesting that the security deposit be returned to the tenant at the daughter's address. The landlords then filed for dispute resolution on March 25, 2010 claiming a pro-rated amount of rent for the month of February in the amount of \$1,249.00 because they were able to re-rent the unit on February 26, 2010 and collected a pro-rated amount for that month from the new tenant.

Analysis

Because the landlords collected a pro-rated amount of rent for the 1st month of the tenancy, and the tenancy agreement specifies that rent is payable on the 1st day of each month, I find that the landlords are entitled to collect from the tenant rent for the month of February, 2010. *The Residential Tenancy Act* states as follows:

- 45** (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The landlord's agents have not claimed the full amount of rent for the month of February because they collected a rental payment for the same unit for a partial month.

Conclusion

I find that the landlord has established a claim for \$1,249.00 in unpaid rent. The landlord is also entitled to recovery of the \$50.00 filing fee. I order that the landlord retain the deposit and interest of \$500.00 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$799.00. 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: July 20, 2010.

Dispute Resolution Officer