



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord for a Monetary Order for money owed or compensation for damage or loss under the Residential Tenancy Act (Act), regulation or tenancy agreement, an Order to keep all of the security deposit and recover the filing fee paid for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*, and sent to the tenants by registered mail on February 11, 2010. The hearing was reconvened to today's date to give the landlord opportunity to receive and respond to the tenant's evidence package which the tenants had sent to landlord's agent but inadvertently used the wrong name on the registered mail.

The landlord and her agent appeared and the tenants named on the application appeared. Another tenant also appeared as a witness for the tenants although she was not named on the application. All parties 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

- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

This fixed term tenancy was renewed on February 01, 2009 although the tenancy started in February 2008. The fixed term for this tenancy was due to expire on January 31, 2010 and the tenants moved out on that date. Rent for this unit was \$1,485.00 per month which included utilities and was due on the first of each month. The tenants paid a security deposit of \$650.00 on February 01, 2008.

The landlord has provided a copy of the tenancy agreement which shows the end date of the tenancy as January 31, 2010. The landlord testifies that the agreement also has a clause which states that tenants must give the landlord one months notice to end the tenancy. The landlord claims these tenants gave her notice by e-mail on January 10, 2010 to end the tenancy at the end of the fixed term. The landlord states she e-mailed these tenants back and requested that they comply with the tenancy agreement and give her one clear months notice in writing signed and dated by both tenants and the tenancy could then end on February 28, 2010. The landlord claims she never received written notice from the tenants.

The landlord states the third tenant offered to stay at the rental unit at a reduced rent but the landlord declined this offer and the third tenant also moved out. The landlord states she seeks the loss of rental income from the two tenants named in the application only to a sum of \$990.00 and do not wish to pursue the remainder of the rent from the third tenant as she offered to stay at the unit for February, 2010.

The landlord seeks to keep the security deposit of \$650.00 plus any accrued interest in partial satisfaction of her claim. The landlord also seeks to recover the \$50.00 filing fee from the tenants.

The tenants dispute the landlords claim. The tenants testify that despite repeated requests to the landlord she failed to give them a copy of their tenancy agreement entered into on February 01, 2009. The tenants state the landlord did not uphold the tenancy agreement as she failed to deal with issues with neighbouring tenants which affected the tenants peace and quiet

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enjoyment and their tenancy became unsafe due to suspected drug use with the downstairs tenants and a high volume of people coming and going from the downstairs unit. The tenants state they requested the landlord to deal with these issues and she failed to do so.

The tenants also claim the landlord did not make repairs to the rental unit in a timely manner and consequently they felt they would have to end the tenancy due to the actions of other tenants and the landlords' inability to make required repairs in a timely manner.

The landlord does not dispute that she did not give the tenants a copy of the new tenancy agreement signed in February, 2009. But states that the only changes were the dates and therefore the tenants were aware of the terms and conditions of the agreement from their previous agreement.

The landlord testifies that she did not have communication from the tenants about the downstairs tenants drug use. The landlord states the tenants were under no obligation to remain at the rental unit after the end of the fixed term or to extend the lease and only required them to give her the proper notice period. The landlord argues that the tenant's issues with repairs were addressed in a timely manner and if they were unhappy about their tenancy they could have given their notice to end the tenancy by December, 31, 2009. The landlord states she had a dialogue with the tenants in November, 2009 when they wanted to renew their lease for the following year on a month to month basis and argues that at this time they would have had full knowledge of any problems with the downstairs tenants or alleged repairs not completed.

Analysis

I have carefully considered the pertinent evidence before me, including the affirmed evidence of both parties and witness; section 45(2) of the *Act* states that a tenant may end a fixed term tenancy by giving the landlord Notice to End the Tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice.

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The tenancy agreement was due to end on January 31, 2010 and the landlord had included a separate clause in the tenancy agreement which states that the tenants are required to provide one months notice to end the tenancy and the tenants were also reminded of this clause by the landlord when she first received their e-mail on January 10, 2010 when they gave notice to end the tenancy. In this instance I find the tenants gave the landlord notice by e-mail on January 10, 2010 to end the tenancy on January 31, 2010 and consequently did not provide the landlord with one clear months notice to end the tenancy.

The tenants argue that the landlord has not complied with the *Act* with regards to their safety, peace and quiet enjoyment and repairs to the rental unit. However, the tenants have presented no evidence that they informed the landlord in writing of their issues with the tenants downstairs or the repair work. The tenants also argue that the landlord never gave them a copy of the tenancy agreement to refer to when requested to do so. The landlord argues that only the dates had changed on the tenancy agreement and therefore the tenants should have been aware of the terms of the agreement when they signed it as they still had a copy of the previous agreement.

Section 13(3) of the *Act* states: a landlord has 21 days after entering into a tenancy agreement to give the tenants a copy of that agreement. Therefore I find the landlord did not comply with the *Act* in regard to the tenancy agreement. As the tenants were not given a copy of this agreement it would be reasonable to assume that they may not have been aware of the additional term regarding the one months notice period. However, this alone would not satisfy me the tenants were not aware of the requirement to provide the landlord with one months notice as the landlord communicated this to the tenants and the *Act* specifies one months notice must be given. Consequently, I find the tenants did not provide the landlord with the correct notice period and uphold the landlords' application to recover her loss of rental income for February, 2010 to the sum of **\$990.00**.

I further find the landlord may keep the tenants security deposit of \$650.00 and accrued interest of \$6.86 in partial satisfaction of her claim pursuant to section 38 (4)(b) of the *Act*. I also find the



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landlord is entitled to recover the \$50.00 filing fee from the tenants pursuant to section 72(1) of the *Act* and is therefore entitled to a Monetary Order for the following amount:

Loss of rental income claimed	\$990.00
Subtotal	\$1,040.00
Less security deposit and accrued interest	(-\$506.86)
Total amount due to the landlord	\$533.14

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 **\$533.14**. The order must be served on the respondents and is enforceable through the Provincial Court 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: August 09, 2010.

Dispute Resolution Officer