

DECISION

Dispute Codes: MNR, MNDC, MNSD and FF

Introduction

This application was brought by the landlords on July 12, 2010 seeking a Monetary Order for loss of rent, damage or loss under the legislation or rental agreement, and recovery of the filing fee for this proceeding, and authorization to retain the security and pet damage deposits in set off against the balance owed.

Despite having been served with the Notice of Hearing sent by registered mail on July 14, 2010, the tenants did not call in to the number provided to enable their participation in the telephone conference call hearing. Therefore, it proceeded in their absence.

Issues to be Decided

This application requires a decision on whether the landlord is entitled to monetary compensation for the loss of rent, damage or loss under the rental agreement and recovery of the filing fee, and authorization to retain the security and pet damage deposits in set off against the balance owed.

Background, Evidence and Analysis

This tenancy began on October 31, 2009 under a fixed term rental agreement set to end on June 30, 2011. Rent was \$1,300 per month and the landlord held a security deposit of \$1,300, utilities deposits of \$240 and a pet damage deposit of \$500, totalling \$2,040 in deposits.

As a matter of note, the landlord has already returned the portion of the deposits remaining after deducting the amounts claimed. As the application was made within 15 days of the end of the tenancy, the landlord was entitled to retain the deposits pending the outcome of this hearing. Any adjustments will be addressed at the conclusion of this decision.

During the hearing, the landlord submitted a copy of the tenants' notice to end tenancy dated April 30, 2010 and setting an end of tenancy date of June 30, 2010. The landlord stated that, even though she began advertising a few days after receiving the notice, she was unable to find new tenants until August 1, 2010.

As a result of the tenants' breach of the fixed term agreement, the landlord claims and I find as follows:

Loss of rent for July 2010 - \$1,300. I accept the landlord's evidence that she began advertising early and therefore met her obligation under section 7 of the *Act* to do whatever is reasonable to minimize the loss, but she was unable to find new tenants until August. Section 45 of the *Act* requires that a tenant's notice to end a fixed term tenancy agreement cannot have an effective date earlier than the end of tenancy date set by the agreement. Therefore, they are responsible for the loss of rent and this claim is allowed in full.

Utilities, March to June 8, 2010 - .88.18. Under the rental agreement, utilities charges were split equally between the upstairs and down stairs tenants. The landlord submitted that the stated amount had not been paid at the end of the tenancy. This claim is allowed.

Hydro, June 9 to July 31, 2010 – \$39.75. Even though the tenants were not resident in the rental unit during July, as the downstairs tenants were responsible for only half of the utilities, this is a cost that the landlord would not have incurred if the tenants had not breached the fixed term agreement. Therefore, this claim, supported by receipts, is allowed in full.

Gas, June 9, to July 31, 2010 - \$74.20. For the same reasons stated in the foregoing item, this claim is allowed in full.

Advertising – \$221.69. As this cost, supported by receipt, would not have been incurred if the tenant's had fulfilled the fixed term agreement, the claim is allowed in full.

Lawn care - \$75. Under the rental agreement, the tenants were responsible for cutting the grass in the front yard of the property. After learning that commercial service providers would charge in the order of \$100 per cutting, the landlord arranged with the downstairs tenant to cut the grass three times in July at \$25 per cutting. This claim is allowed in full.

Photocopying - \$16.91. Items such as copying and mailing etc. are regarded as routine costs of doing business and are not claimable under the Act. This claim is dismissed.

Filing fee - \$50. As the application has succeeded on its merits, the landlord would be entitled to recover the filing fee for this proceeding from the tenants.

Total amount of Deposits - \$2,040.

Amount returned – \$224.77

Thus, I find that accounts balance as follows::

Tenants' Credits		
Security deposit (No interest due)	\$1,300.00	
Pet damage deposit (No interest due)	500.00	
Utilities deposits	<u>240.00</u>	
TOTAL of tenants' credits	\$2,040.00	\$2,040.00
Amount Owed to Landlord		
Loss of rent for July 2010	\$1,300.00	
Utilities, March to June 8, 2010	88.18	
Hydro, June 9 to July 31, 2010	39.75	
Gas, June 9 to July 31, 2010	74.20	
Advertising	221.69	
Lawn care	75.00	
Filing fee	<u>50.00</u>	
TOTAL award to landlords	\$1,848.82	- 1,848.82
Amount of deposits to be returned to tenants		\$191.18
Amount that has been returned		<u>- 224.77</u>
Remainder		\$ (33.59)

As there was a small balance remaining owed to the landlords by the tenants, the landlord waived the claim for any balance and the matter is closed.

Conclusion

I hereby authorize and order pursuant to section 72 of the *Act* that the landlord may retain the deposits in set off against the claims made, and the \$224.77 previously returned to the tenants constitutes the final balancing of accounts.

November 26, 2010