



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlord to obtain a Monetary Order for unpaid rent and utilities, an Order to keep all or part of the security deposit and to recover the cost of the filing fee.

Service of the hearing documents, by the landlord to the tenants, was done in accordance with section 89 of the *Act*, sent via registered mail on October 16, 2010. Mail receipt numbers were provided in the landlord's documentary evidence. The tenants were deemed to be served the hearing documents on October 21, 2010, the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlords agent appeared, gave affirmed testimony, was provided the opportunity to present his evidence orally, in writing, and in documentary form. There was no appearance for the tenants, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent and utilities?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

The landlords' agent testifies that this month to month tenancy started on May 29, 2010 and ended on September 23, 2010. Rent for this unit was \$1,200.00 per month and was due on the 1st of each month. The tenants paid a security deposit of \$600.00 on May 29, 2010.

The landlords' agent testifies that the tenants did not give any Notice to end the tenancy. He states he received a telephone call from the tenants on September 23, 2010 when they told him they were leaving the rental unit on that day and arranged to meet him at a parking lot to return the keys. The landlords' agent states the earliest the tenancy could have legally ended the tenancy was October 31, 2010 as the tenants failed to give him the correct one months notice. Therefore, he states the tenants are libel for rent for October to the sum of \$1,200.00.

The landlords' agent states he meet the male tenant on September 23, 2010 where he returned the keys to him. He states he told the tenant he did not give him the required notice to end the tenancy and the tenant told him he had provided an e-mail him with his Notice to end his tenancy. The landlords' agent states this e-mail was never received. At this meeting the tenant gave the landlords' agent their forwarding address in writing and told him he could pay any outstanding utilities and cleaning costs from their security deposit.

The landlords' agent testifies he sent the tenants copies of the utility bills on October 16, 2010 but has not received anything in writing from the tenants to allow him to pay these or the cleaning costs out of their security deposit. The bills are for July, 2010 of \$46.77; August, 2010 of \$56.78 and September, 2010 of \$53.23 to a total sum of \$156.78.

The landlords' agent testifies that as the tenants have moved to America he does not seek to pursue his claim for additional Monetary Orders for the unpaid rent due to improper Notice to end their tenancy nor does he seek to recover his \$50.00 filing fee; However the landlord does seeks to keep all the tenants security deposit of \$600.00 in full and final settlement of his claim of \$2,800.00.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and affirmed testimony of the landlords' agent.

Section 45 of the *Act* says a tenant may end a periodic tenancy by giving the landlord Notice to end the tenancy effective on a date that is a)not earlier than one month after the date the landlord receives the Notice and b) is the day before the day in the month that rent is payable under the tenancy agreement. As the tenants have not appeared to dispute the landlords evidence that they did not give the required Notice I find the landlord has established his claim for unpaid rent for October, 2010 and is are entitled to recover the sum of \$1,200.00 from the tenants pursuant to s. 67 of the *Act*.

With regard to the unpaid utilities; if a tenant agrees the landlord may deduct a sum from their security deposit they must agree to this in writing. As the tenant only verbally told the landlords agent he could pay the utilities from their security deposit the landlord has had to file an application to keep all or part of that deposit. I find the landlord provided copies of the utility bills to the tenants in his hearing documents on October 16, 2010 and these remain unpaid by the tenants. Consequently, I find the landlord is entitled to keep the amount of \$156.78 from the tenant's security deposit for these bills.

The landlord has requested that he does not wish to pursue a Monetary Order to recover the amount claimed on his application but only seeks an Order to keep all the security deposit in satisfaction of his claim. It is my decision that the landlord has provide sufficient evidence to support his claim for unpaid rent and utilities and consequently I Order the landlord to keep the security deposit of \$600.00 pursuant to s. 38(4)(b) of the *Act* in full and final settlement of his claim.

Conclusion

I HEREBY FIND in favor of the landlords claim to keep the tenant's security deposit. I ORDER the landlord to keep \$600.00 from the security deposit in full and final settlement of his claim.

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: February 11, 2011.

Residential Tenancy Branch