



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and the tenant named as respondent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for lost revenue and utilities; for loss or damage under the *Residential Tenancy Act (Act)*, regulation or tenancy agreement; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on August 6, 2010 for a 10 month fixed term tenancy beginning on September 1, 2010 for a monthly rent of \$1,750.00 due on the 1st of each month and a security deposit of \$875.00 was paid on August 7, 2010.

The tenant provided copies of emails from her to the landlord dated September 17, 2010 provide her intention to vacate the rental unit by September 19, 2010 and the landlords' response that indicates that this tenant and the male tenant are co-tenants and the landlord accepts the notice that both tenants will be terminating the lease.

The landlord goes on to say that both the tenants may remain in the rental unit until the end of September 2010 as rent is paid until then but if either one wants to rent the house a new tenancy agreement will be required to be signed by October 1, 2010.

The landlord testified that the male tenant did indicate that he would be looking for a roommate and may be interested in a new agreement but that this never materialized and the male tenant vacated the rental unit on October 1, 2010. There was no indication from either party the female tenant informed the landlord of any desire to re-rent the unit.

The tenant asserts that the landlord must have entered into a new tenancy agreement with the landlords and as such, she is not responsible for any amount of debt owed to the landlord and that the landlord should be seeking compensation from the male tenant.

The landlord seeks the following compensation:

Description	Amount
Rent – October 2010	\$1,750.00
Utilities (duration of tenancy and Oct 2010)	\$258.30
Advertising costs	\$97.27
Rekeying of locks	\$204.00
Total	\$2,309.97

The landlord testified as a result of the tenants vacating the rental unit the landlord had to pay the utility charges for the month of October 2010 until the unit was re-rented for November 1, 2010.

The landlord clarified that their usual practice is to rent the residential property out for 10 months each year and that they return to the property and live there themselves for the summer months. As a result, and for the convenience of tenants not having to deal with utility companies and related hook up fees, the landlords keep all the utilities in their name.

The landlords included copies of all utility bills for the relevant period and receipts for advertising the rental unit

The landlord testified as a result of threats made by the male tenant and other uncertainty regarding the end of this tenancy the landlords felt they had no alternative but to change the locks on the rental unit to ensure their safety and the safety of any new tenants who were going to move in.

Analysis

Residential Tenancy Policy Guideline 13 states “Co-tenants are jointly and severally liable for any debts or damages relating to the tenancy. This means that the landlord can recover the full amount of rent, utilities or any damages from all or any one of the tenants. The responsibility falls to the tenants to apportion among themselves the amount owing to the landlord.”

The tenant has provided not supporting evidence to her claim that the landlords entered into a new tenancy agreement with the former co-tenant. In addition, I find the landlords provided clear notification to both tenants that since they had paid the rent to the end of September, 2010 that should either one wish to remain as a tenant they would have to

enter into a new tenancy agreement prior to October 1, 2010, but the landlords understood the notification to mean that both tenants were terminating the tenancy agreement.

For the above reasons, I find the landlords had not entered into a new tenancy agreement with the respondent's former co-tenant and that the landlords are entitled to file a claim against either one or both of the tenants and accept that the landlords have filed their claim solely against the female tenant.

Section 45 of the *Act* states a tenant may end a fixed term tenancy by giving notice to end the tenancy effective on a date that, among other things, is not earlier than the date specified in the tenancy agreement. Section 53 states that should a tenant gives a notice with an effective date that does not comply with Section 45, the effective date is automatically corrected to the earliest possible effective date that makes it compliant with Section 45.

As such, I find the effective date of the end of this tenancy to be June 30, 2011. Having said this, Section 7 of the *Act* states that if a landlord makes a claim for compensation for damage or loss from the tenant's non-compliance (such as a non compliant notice to end tenancy) the landlord must do whatever is reasonable to minimize the damage or loss.

I accept that the landlords took reasonable steps by advertising to rent the unit to new tenants when they were certain that neither of the tenants wanted to continue on as individual tenants and sign a new agreement.

I accept the male tenant informed the landlords by September 29, 2010 that he did not intend to remain as a single tenant. And in the absence of any evidence or testimony from either party as to whether the female tenant's interest in remaining as a single tenant was ever conveyed by the female tenant prior to October 1, 2010, I find the landlords began advertising at a reasonable point in time.

As a result of the landlords' advertising the landlords were able to secure tenants for November 1, 2010 leaving the tenant responsible only for rent for the month of October, 2010. In addition, as a result of the tenants ending the tenancy prior to end of the fixed term, I find the landlords are entitled to compensation for advertising in the amount supported by their receipts totalling \$97.27.

Based on the evidence and testimony provided, I find no cause for the landlord to change the locks as a result of actions or violations of the *Act*, regulations or tenancy agreement. I therefore dismiss this portion of the landlord's application.

As to the landlords' claim for utilities, I accept that the tenants were responsible for utilities during the time of the tenancy, but once the tenants moved it out and the tenancy ended, the landlords chose to maintain the utilities for their own reasons and I find the tenants are not responsible for those charges.

As such, I accept the tenants are responsible for the \$384.39 less \$160.55 for charges for all utilities for October 2010 totalling \$223.84. This amount is further reduced by the amount already paid by the tenant of \$126.09 for a final total amount owed by the tenant of \$97.75.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1970.02** comprised of \$1,750.00 rent owed; \$97.27 advertising costs; \$97.75 utilities and as the landlords were only partially successful in their claim \$25.00 of the \$50.00 fee paid by the landlords for this application.

I order the landlord may deduct the security deposit and interest held in the amount of \$875.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$1,095.02**. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) 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: March 30, 2011.

Residential Tenancy Branch