



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Public Safety and Solicitor General

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This matter dealt with an application by the landlord for a Monetary Order for money owed or compensation for loss or damage under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement, an Order to keep the security and pet damage deposit and to recover the filing fee for this application.

Service of the hearing documents was done in accordance with section 89 of the *Act*. The tenants confirmed receipt of the hearing documents.

Both parties appeared, 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:

Issue(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 and pet deposit?

Background and Evidence

Both parties agree that this tenancy started on July 15, 2010. Rent for this property was \$2,275.00 per month and was due on the 1st day of each month in advance. This was a fixed term tenancy which was due to expire on July 31, 2011. The tenants paid a security deposit of

\$1,137.50 and a pet deposit of \$1,135.00 both on July 15, 2010. A move in and move out condition inspection of the property was completed and the tenants gave the landlord their forwarding address by e-mail on November 01, 2010.

The landlord testifies that the tenants gave him notice to move from the rental unit and they moved out on October 31, 2010. However, they did pay rent up to the end of December, 2010. The landlord testifies that he was unable to re-rent the unit until February, 2011 and his new tenants moved in on February 05, 2011. The landlord seeks to recover a loss of rental income because this was a fixed term tenancy, for January, 2011 of \$2,275.00. The landlord testifies that he advertised the unit in many different forums and had to rent the unit at a reduced rent of \$1,995.00. The landlord seeks to recover the difference in rent for the remainder of the fixed term of the tenancy i.e. \$280.00 for six months to a sum of \$1,680.00.

The landlord had amended his claim to \$6,520.70 in his documentary evidence

The landlord seeks to recover advertising costs of \$1,387.10. He states he did advertise in all the free internet sites but also had to advertise in a newspaper which charged a fee. The landlord has provided receipts for these costs and states they were incurred because the tenants moved out before the end of their fixed term.

The landlord seeks to recover the sum of \$783.10. He states this cost is for his travel and ferry costs as he had to attend the rental unit and had to come to inspect the rental unit as a condition of his insurance. He also states he had to attend the move out inspection with the tenants and the move in inspection for the new tenants. The landlord states when the tenants moved into the unit his son who lives locally to the unit acted as his agent because he was away at the time. He states his son is only available for emergencies and could not do the other inspections.

The landlord seeks to recover utilities from the tenants for two billing periods; One being from November 01, 2010 to December 10, 2010 of \$145.27 and from December 11, 2010 to January 31, 2011 of \$25.74. The landlord states the Hydro had to be kept on in the unit after the tenant's vacated to ensure it was heated and lit. As the tenants were in a fixed term tenancy they should be responsible for these costs.

The landlord seeks to keep the tenants security deposit of \$1,137.50 and pet deposit of \$1,135.00 in partial satisfaction of his claim. The landlord also seeks to recover his \$100.00 filing fee from the tenants for this application.

The tenants testify that they were willing to pay the rent for January, 2011 and do not dispute this sum and do not dispute the difference in rent for the six remaining months of their tenancy however they state they did find a new tenant to take over the rental unit at the same rent they paid but she did not want to pay the pet deposit charge and this fell through. The tenants also state that they asked the landlord if they could sublet the unit but he refused.

The tenants dispute the landlords' charges for advertising costs. They testify that they also advertised the unit extensively and had 37 viewings of the unit for the landlord. They state they promoted the unit extensively and feel the landlord did not have to advertise the unit on an expensive newspaper when the free sites yielded a large amount of interest and did in fact attract the new tenants.

The tenants dispute the landlords' claims for travel. They state this is the cost of doing business as a landlord. They state the landlord did use his son who lives in the area as an agent at the start of their tenancy and could have used him again as his agent for any subsequent visits to avoid excessive travel costs.

The tenants dispute the utility charges. They claim these charges are far more than when they were living in the property and using the electricity. They question the landlords' right to charge them for electricity they have not used since their tenancy ended.

Analysis

I have carefully considered all the evidence before me, including the affirmed evidence of both parties. With regard to the landlords claim for a loss of income; the tenants do not dispute this claim and consequently as the tenants ended the tenancy before the end of the fixed term and the unit was re-rented at a lower rent for the remainder of the term the tenants are responsible

for this loss and the landlord is entitled to recover the sum of **\$3,955.00** from the tenants pursuant to s. 67 of the *Act*.

With regard to the landlords claim for advertising costs of \$1,387.10; when a tenancy ends at the end of a term then a landlord would have to pay advertising costs to attract a new tenant. Because this came sooner than the landlord expected because the tenancy ended before the end of the fixed term it does not mean the landlord may recover this sum from the tenants. I also find the landlord did not mitigate his loss in this matter and used an expensive advertisement site when both he and the tenants were achieving successful interest from the free sites. Consequently, this section of the landlords claim is dismissed.

With regard to the landlords claim for travel costs of \$783.10; when a landlord is an absentee landlord any travel costs are a cost of doing business as a landlord and as such the landlord is not entitled to recover this from the tenants. Therefore, this section of his claim is dismissed.

With regard to the landlords claim for utilities of \$391.01 for Hydro used at the property after the tenants had moved. In this matter I find as the tenants ended the tenancy before the end of the fixed term the landlord had to put the utilities into his name in order to ensure the unit had adequate heat and light before it was re-rented. Consequently, the landlord is entitled to recover these charges from the tenants of **\$391.01** pursuant to s. 67 of the *Act*.

The landlord is entitled to keep the security deposit of **\$1,137.50** and pet deposit of **\$1,135.00** in partial satisfaction of his claim pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been partially successful he is also entitled to recover his **\$100.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued for the following amount:

Loss of rental income for January, 2011	\$2,257.00
Utility bills	\$391.01
Subtotal	\$4,328.01
Plus filing fee	\$100.00
Less security and pet deposits	(-\$2,272.50)
Total amount due to the landlord	\$2,155.51

Conclusion

I HEREBY FIND in partial favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,155.51**. The order must be served on the respondents and is enforceable through the Provincial Court as an order of that Court.

The reminder of the landlords' application is dismissed without leave to reapply.

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 25, 2011.

Residential Tenancy Branch