



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, FF

Introduction

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for compensation for damage or loss under the Act, regulation or tenancy agreement – Section 67; and
3. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The fixed term tenancy began on March 1, 2011 with an effective date of February 28, 2012. The tenancy ended on June 15, 2011. Rent in the amount of \$820.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenant in the amount of \$410.00 and a pet deposit in the amount of \$410.00.

The Landlord states that the Tenants gave verbal notice on May 2 or 3, 2011 that they wished to end the tenancy for May 31, 2011. The Landlord states that the Parties agreed to end the tenancy on June 15, 2011 with rent payable to that date if the Landlord were able to rent the unit again for June 15, 2011. The Landlord states that if the unit were not rented by that date then the parties agreed that the Tenants would be liable for the full month’s rent for June 2011. The Landlord states that the Tenants agreed that the Landlord could retain the amount for the rent payable to June 15, 2011 from their security deposit. The Landlord states that advertisements for the unit commenced on or about May 10, 2011 for occupancy on June 15, 2011. The Landlord

states that the advertisements were all placed online and that new tenants were obtained for a tenancy to start July 1, 2011. The Landlord claims rent for June 2011.

The Tenant states that the Landlord was verbally informed near the end of April 2011 that they could no longer afford the rental unit and would have to move out of the unit by the end of May 2011. The Tenant states that the Landlord negotiated an end to the tenancy for June 15, 2011 and that as this was agreed to by the Parties, the Tenant is only responsible for rent to that date. The Tenant provided email communications between the Parties as evidence of the agreement. The Tenant states that the agreement to end on June 15, 2011 was not conditional on the Landlord obtaining new tenants for that date. The Tenant does not dispute that the Parties agreed that the Landlord could retain the amount of \$410.00 from the security deposit to cover the rent payable to June 15, 2011.

The Landlord states that as a result of the Tenants breach of the fixed term tenancy the Landlord incurred losses by having to change locks on the unit, carrying out credit checks on new tenants and travel time and expenses to show the unit. The Landlord states that as a usual business practice, locks on units are changed between tenancies and prospective renters are required to undergo a credit check. The Landlord states that travel time and expenses are also a usual business expense between tenancies but that an early end to a tenancy causes these usual business expenses to be incurred earlier than expected.

The Tenant states that the Landlord did not attend any of the showings of the unit while the Tenants were still occupying the unit and that the realtor attended these showings and therefore does not understand the Landlord's costs as claimed. The Tenants support person argued that the Landlord is in the business of renting to higher risk tenants, has rents set at the top end of the scale and that any additional costs in re-renting the unit is related to a business choice to enter into high risk tenancies and therefore not the responsibility of the Tenant.

The Landlord states that the rent cheque for June 2011 was returned and claims the amount of \$25.00 for the returned cheque and \$25.00 for late payment of June 2011 rent. It is noted that the lease agreement provides for the Tenants responsibility for these costs, if incurred. The Tenant submitted that the Landlord deposited the June 2011 rent cheque contrary to their agreement and agrees there were no funds to cover the cheque.

Analysis

Considering the email evidence of May 31, 2011, and accepting the oral evidence of the Tenant that the Landlord was contacted about ending the tenancy before the end of April 2011, I find that the Parties mutually agreed to end the tenancy as of June 15, 2011 and that by remaining in the unit beyond the end of May 2011, the Tenants relied on this agreement to end financial obligations for rent past this date. Accordingly, I find that the Landlord is only entitled to the amount of **\$410.00** for rent to June 15, 2011.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the Party claiming costs for the damage or loss must prove on a balance of probabilities that, inter alia, the damage or loss exists and the damage or loss claimed was caused by the actions or neglect of the responding Party. Given the Landlord's evidence that costs for relocking units between tenancies and carrying out credit checks accrue as a usual business practice and not as a result of any action or negligence of the Tenants, I find that these costs are not compensable as a result of any act or negligence by the Tenant under the Act, regulation or tenancy agreement. Accordingly, I dismiss this part of the Landlord's application.

Considering the above finding that the tenancy agreement was mutually ended, and considering that the costs claimed by the Landlord accrue as a usual course of business, I find that the costs for the Landlord's time in re-renting the unit were not accrued as a result of any act or negligence by the Tenant under the Act, regulation or tenancy agreement. Accordingly, I dismiss this part of the Landlord's application.

Given the above finding that the tenancy ended by mutual agreement, I find that by depositing the June 2011 rent cheque in the amount of \$810.00, the Landlord acted contrary to the agreement and I therefore dismiss the claims for costs related to the returned cheque and the late rent fee.

As the Landlord's application has been primarily without merit, I make no award in relation to recovery of the filing fee.

Conclusion

I order that the Landlord retain the amount of \$410.00 from the security and pet **deposits** plus interest in the amount of \$820.00, leaving the amount of \$410.00 payable by the Landlord to the Tenant.

I grant the Tenant an order under Section 67 of the Act for amount of **\$410.00**. If necessary, this order may be filed in the Small Claims Court 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: September 27, 2011.

Residential Tenancy Branch