



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND MNR MNSD MNDC FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The landlord, an advocate for the landlord and one tenant participated in the conference call hearing.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The tenancy began on February 1, 2011 as a fixed-term tenancy to end on January 31, 2013. Rent in the amount of \$2100 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 tenants in the amount of \$1050. A term in the addendum to the tenancy agreement indicates that the tenants must pay \$2100 if they break the lease. The tenancy ended on July 15, 2011.

The evidence of the landlord on his application was as follows.

At the beginning of July 2011, the tenants gave verbal notice that they were moving out, and the landlord began to immediately advertise the unit. The tenants did not pay any rent for July 2011. The tenants moved out on July 15, 2011. The tenants did not pay all of the outstanding water bills and utilities. The rental unit is still vacant, as it is difficult to re-rent.

The landlord has claimed the following compensation:

- 1) \$497.70 for unpaid utilities – the tenants were responsible for the utilities, but did not pay the bills. The landlord calculated the estimated amounts owing based on the tenants' occupancy of the rental unit for seven and a half months, from February 1, 2011 to August 14, 2011.
- 2) \$1050 for half a month's rent for July 1 to 15, 2011.
- 3) \$2100 penalty for breaking the lease – the tenants signed the tenancy agreement and addendum agreeing to pay this amount if they broke the lease, so that should be sufficient to require the tenants to pay this penalty.
- 4) \$39.39 for mailing costs to serve the tenants with notice of the hearing.

The tenant's response was as follows.

The tenant's ex-husband moved out first, which the tenant could not have anticipated. The tenant gave the landlord verbal notice that she would be moving out as well, and vacated on July 15, 2011. The tenant stated that the amounts the landlord is claiming for utilities are incorrect, because they are the amounts owed for the whole year, not just for the term of the tenancy. The tenant disputed the landlord's claim that he advertised the unit to re-rent.

Analysis

In considering all of the evidence, I find as follows.

- 1) Unpaid utilities – the landlord did not have all of the receipts for the exact amounts owing for the period of the tenancy. Further, the landlord estimated amounts owing up to August 14, 2011, but the tenants vacated on July 15, 2011. As the landlord's calculations were partly based on estimates and included one month that the tenants did not occupy the unit, I find the landlord is not entitled to the amounts claimed for unpaid utilities, and I dismiss this portion of the application.
- 2) \$1050 in unpaid rent for July 1 to 15, 2011 – I find that the landlord is entitled to this amount.
- 3) \$2100 penalty for breaking the lease – a fixed-term tenancy agreement may include a clause whereby the parties agree in advance the damages payable if the tenant seeks to end the tenancy before the end of the fixed term. However, the amount agreed upon must be a genuine pre-estimate of the costs of re-renting, not a penalty. In this case, the landlord could not provide evidence that the amount claimed was a genuine pre-estimate of the costs of re-renting; moreover, the landlord described the amount as a "penalty." I therefore dismiss this portion of the application.
- 4) Mailing costs – the only potentially recoverable cost associated with the dispute resolution proceeding is the filing fee. The landlord is therefore not entitled to mailing costs, and I dismiss this part of the application.

As the landlord's claim was partially successful, I find he is entitled to partial recovery of his filing fee, in the amount of \$25.

Conclusion

The landlord is entitled to \$1075. I order that the landlord retain the security deposit of \$1050 in partial satisfaction of the claim and I grant the landlord an order under section 67 for the balance due of \$25. 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: October 5, 2011.

Residential Tenancy Branch