



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes Landlord: MNR, MNDC, MNSD, FF
 Tenants: MNSD, FF

Introduction

This hearing dealt with cross Applications for Dispute Resolution, both the landlord and the tenants sought monetary orders.

The hearing was conducted via teleconference and was attended by the tenants and the landlord's agent.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for rent owed due to short Notice to End the tenancy; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

It must also be decided if the tenants are entitled to return of the security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted a copy of a tenancy agreement signed by the parties on August 25, 2009 for a 1 year fixed term tenancy beginning on September 1, 2009 for a monthly rent of \$850.00 due on the 1st of each month.

From the documentary evidence submitted by the landlord the tenants had moved from a previous rental unit with the landlord where they had paid a security deposit on December 1, 2001 in the amount of \$257.50 and when they moved to this unit this amount was transferred to the new tenancy and the tenants paid an additional \$167.50.

The tenants testified that they provided the landlord on June 30, 2011 with notice of their intention to end the tenancy in writing by leaving the notice in the slot of the office of the building manager along with their rent cheque.

The landlord's agent asserts that she did not receive this notice until July 2, 2011. She testified that the notice was not in the office by the end of business on July 1, 2011.

She initially testified that tenant's rent was paid by automatic withdrawal but later changed her testimony when I asked why I had a copy of a negotiated cheque for rent dated June 30, 2011. Her revised testimony was that the neither the cheque nor the notice was received until July 2, 2011.

The tenants submit that on July 4, 2011 the landlord provided, by leaving through the slot in the tenants' door, some documents including an acknowledgement that the tenants provided insufficient notice to end the tenancy and that they would be responsible for rent for August 2011 and a notice from the landlord of the landlord's intent to enter the rental unit on July 5, 2011 to complete a preventative maintenance report.

The tenants submitted that they then decided that instead of forgoing the rent for the month of August 2011 and provided the landlord, on July 5, 2011, with a new written notice of their intention to vacate the rental unit effective August 31, 2011. The tenant submits that they confirmed verbally with the landlord that she had received this notice via phone call on July 6, 2011.

The landlord's agent testified that tenants did call her on July 5, 2011 to inform her that they would withdraw their notice to end tenancy and that she heard nothing else from the tenants until they called to set up a move out condition inspection.

The landlord's agent testified the company runs ads constantly for rental units in this building and that she re-rented to the unit on October 1, 2011 with an effective start date of the new tenancy of October 1, 2011. The landlord provided no documentary supporting evidence for either claim.

The landlord seeks compensation in the amount of rent for the month of September 2011 in the amount of \$850.00. In addition, the landlord seeks \$71.00 as an amount unpaid by the tenants for a "rental incentive" that the landlord extended to the tenants when they signed a 1 year fixed term tenancy agreement.

The agreement states that for signing the fixed term tenancy agreement the tenants are entitled to one month's free rent to be provided over the course of the fixed term by rent reductions in the amount of \$70.00 per month.

The landlord's agent testified that even though the tenants had already received the full incentive in August 2010 that, for reasons that were complicated, she had been paying the top up to the landlord since September 2010. The outcome was that the tenants had been paying rent in the amount of \$779.00 for the duration of the tenancy.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45 of the *Act* allows a tenant to end a tenancy by providing the landlord with notice to do so with an effective date that is not earlier than one month after the date the landlord receives the notice.

While I accept the tenants have been rent in the amount of \$779.00 each month since the start of the fixed term tenancy (September 2009), I find it unlikely the landlord's agent has been "topping up" the tenant's rent in the amount of \$71.00 per month for nearly a year.

As such I find, based on the balance of probabilities, the landlord's agent's testimony related to when the tenants submitted their first notice to end tenancy and if the tenants submitted a second notice to end tenancy to be unreliable.

As a result, I find the tenants provided sufficient notice to end the tenancy and either July 31, 2011 or August 31, 2011 and in accordance with Section 45 of the *Act*. I, therefore, find the landlord has failed to establish they have suffered a loss of income as a result of the tenants' violation of the *Act*, regulation or tenancy agreement and I dismiss this portion of the landlord's Application.

Further, as per the testimony from both parties I find the amount of rent the landlord and its agent had been accepting for the duration of the tenancy was \$779.00 and therefore by their own actions the landlord's had effectively reduced the rent from \$850.00 for the entire tenancy. As a result, I find the landlord has not suffered a loss resulting from a violation of the tenancy agreement and I dismiss this portion of the landlord's Application.

As I have found the landlord to be unsuccessful in their Application I also dismiss their claim to recovery of the filing fee for this Application.

Conclusion

I find the tenants is entitled to monetary compensation pursuant to Section 67 and I grant a monetary order in the amount of **\$484.80** comprised of \$267.30 security deposit and interest held from December 1, 2001; \$167.50 security deposit held from September 1, 2009 and the \$50.00 fee paid by the tenants for this application.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be 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: November 28, 2011.

Residential Tenancy Branch