



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call in repose to the landlords' application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Has the landlord established that there is unpaid rent?
- Is the landlord entitled to keep the tenants security deposit?

Background and Evidence

Both Parties agree that this month to month tenancy started on September 01, 2011 and ended on October 05, 2011. Rent for this unit was \$850.00 per month and was due on the first day of each month in advance. The tenants paid a security deposit of

\$425.00 on August 08, 2011. The tenants gave the landlord their forwarding address in writing by posting it in the landlords' mailbox on October 13, 2011.

The landlord testifies that the tenants gave notice to end their tenancy on September 11, 2011. The landlord testifies that she placed advertisements on a local internet site to re-rent the unit for October 01, 2011. The unit remains vacant to date. The landlord testifies that the tenants paid \$425.00 in rent for October, 2011 and the landlord seeks to keep the tenants security deposit for the balance of rent owed for October due to improper Notice from the tenants to end the tenancy.

The landlord disputes the tenants' documentary evidence that the landlords had verbally agreed to allow the tenants to pay half a month's rent for October, 2011. The landlord testifies that when the tenants gave her the cheque for \$425.00 the landlord assumed the tenants were then agreeing the security deposit would be applied to the remainder of the rent.

The tenants testify that when they rented the basement unit they stressed that they needed a quiet place to live to be able to study. The tenants testify that three girls then moved in upstairs and were so noisy the tenants could not study and informed the landlord that they would have to move out. The tenant states the landlord verbally agreed to try to re-rent the unit for October 01, 2011 and to take half a month's rent for October if she could not find new tenants.

The tenants testify that on October 11, 2011 the landlord informed the tenants that she was not going to stick to the verbal agreement and would not be returning the security deposit to the tenants.

The landlord disputes this and testifies that she could not have given the tenants any assurances that the unit would be a quiet place to live and study as the upstairs tenants had not yet moved into their unit. The landlord testifies that the tenants were fully aware of their obligation to provide one clear months notice to end a tenancy as it is

documented in their tenancy agreement and states she did not have a verbal agreement with the tenants for half a months rent.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 45(1) of the *Residential Tenancy Act (Act)* which states:

A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

The tenants argue that they had a verbal agreement in place to end the tenancy and pay half a month's rent for October if the unit was not rented for October 01, 2011. The landlord disputes this and states the tenants were aware from information in their tenancy agreement that they must give proper notice to end a tenancy and would therefore be responsible for rent for October.

By their nature, disputed verbal terms are not clear and are often impossible for a third party to interpret. I am not prepared to find that a verbal agreement was in place between the parties. If the parties had mutually agreed to end the tenancy the tenants should have asked the landlord to sign a Mutual Agreement to End Tenancy document. As the tenants have no corroborating evidence to support this alleged verbal agreement, I find the landlord has established unpaid rent for October, 2011 to the sum of \$425.00 as the tenants' breached s. 45(1) of the *Act*.

I therefore Order the landlord to keep the tenants security deposit of **\$425.00** pursuant to s. 38(4)(b) of the *Act*.

Conclusion

I Order the landlord to retain the security deposit of \$425.00 held in trust by the landlord for the tenants.

As the landlords have been successful with their application I find the landlords are also entitled to recover the \$50.00 filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order for **\$50.00** has been issued to the landlord.

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: January 10, 2012.

Residential Tenancy Branch