

DECISION

Dispute Codes MNDC, MNR, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for compensation for loss under the legislation and the Tenancy Agreement, for unpaid utilities, to keep all or part of the security deposit and recovery of the filing fee.

Both parties attended the hearing by conference call and gave testimony. The Landlord submitted 5 evidence packages to both the Tenant and the Residential Tenancy Branch. The Tenants have submitted no evidence. The Tenant states that only 2 evidence packages have been received from the Landlord. The Landlord states that this evidence was sent by Regular Canada Post Mail. It was clarified through descriptions by both parties that the missing 3 evidence packages were the registered mail receipts, copies of the Landlord's website advertising the rental and a craigslist ad, and a copy of a new tenancy agreement with new tenants for the rental beginning April 1, 2012. The missing documentary evidence shall not be considered for this hearing, but the Landlord has given the same evidence in his direct testimony without any dispute from the Tenants.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Background and Evidence

This Tenancy began on August 1, 2011 on a fixed term tenancy until July 31, 2012. Both parties agreed that the Tenancy ended on December 31, 2011. Both parties also agree that notice to end the tenancy was received from the Tenant on December 2, 2011. The monthly rent was \$1,350.00 per month payable on the 1st of each month and a security deposit of \$675.00 was paid as shown in the submitted copy of the signed tenancy agreement.

The Landlord states that upon being notified of vacating the rental that 3 different attempts of advertising was made by the Landlord. The Landlord states that within 2 days (December 4, 2011) on the property manager's website, an advertisement was

placed for the re-rental of the property. The second and third were for a Craigslist posting online within 10 days (December 14, 2011) of the notice and for a rent sign being placed at the rental property at approximately the same time. The Landlord's Agent is unable to provide any further information on any other attempts of mitigation.

The Landlord is seeking recovery of \$300.00 as liquidated damages under clause #23 in the signed tenancy agreement. This clause states,

Lease Termination Terms:

If the tenants fail to fulfill the term of the lease they will be responsible to pay \$300.00 to cover advertising, administration and other associated costs with re-renting the property. Tenants will also be responsible to pay the rent for the premises for the original term of the lease.

The Tenant argues that this is a penalty. The Tenants stated in their direct testimony that their understanding of this clause laid out by the original property manager in a verbal conversation that the Tenants were able to end the fixed term tenancy by allowing a \$300.00 payment to be deducted from their security deposit.

The Landlord also seeks the loss of rental income for the months January to March 2012 of \$4,050.00 (\$1,350.00 X 3 months). The Landlord states that they were able to re-rent the unit beginning April 1, 2012. The Tenant disputes this stating that they should only be responsible for anything up until the end of Tenancy on December 31, 2011.

The Landlord is also seeking recovery of utilities of \$583.09. This consists of two BC Hydro Bills totalling \$525.09 (the Tenants portion of 55% equals \$289.25) for the period October 7 to December 7, 2011 which the Landlord states was not paid by the Tenant. The Tenant does not dispute this bill. The Landlord is also seeking recovery of a BC Hydro Bill of 55% of the total equalling \$293.84 for the Tenants share of the period December 8 to February 6, 2012. The Tenant disputes that since the Tenancy ended on December 31, 2011 that they should not be responsible for any utilities after this date. The Tenants also state that as the rental is vacant, the utilities should have dropped in usage dramatically.

Analysis

Based upon the documentary evidence of the Landlord and the direct testimony of both parties, I find that the Landlord has established a claim for liquidated damages totalling \$300.00. I find that this clause is poorly worded, but that the Tenant's own direct testimony is that the tenancy could be ended prematurely if this \$300.00 was

surrendered as a genuine cost to the Landlord to advertise for re-rental. The Landlord is entitled to recovery of the \$300.00 amount.

The Landlord's claim for loss of rental income for \$4,050.00 has not been established. The Landlord's duty to mitigate this loss upon being notified of the Tenant's intent to vacate has not been proven to be reasonable. The Landlord has provided indirect testimony that 3 different attempts were made to mitigate their losses in trying to re-rent the property from December 2, 2011 until the date of this hearing. I find that Landlord is not successful in this portion of the claim. However, the Tenant has given improper notice to end the tenancy on December 2, 2011 for December 31, 2011. On this basis, I grant to the Landlord the loss of rental income for January 2012 of \$1,350.00.

The Landlord has established a claim for unpaid utilities, however as the Tenants have noted that a dramatic drop should have taken place in the usage for the months of January and February as the rental was vacant. The Tenants are only disputing the charges after December 31, 2011. As such, I award to the Landlord \$436.17 for utilities up until the end of December 2011. The Landlord has provided no further information for any adjustments in January 2012 onwards for the Hydro usage. I award a nominal award of \$50.00 for the month of January to the Landlord. The Landlord has established a total claim for utilities of \$486.17.

The Landlord has established a total monetary claim of \$2,136.17, consisting of \$300.00 in liquidated damages, \$1,350.00 in loss of rental income for January and \$486.17 for utilities. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$675.00 security deposit in partial satisfaction of the claim and I grant a monetary order under section 67 for the balance due of \$1,511.17.

Conclusion

The Landlord is granted a monetary order for \$1,511.17.
The Landlord may retain the security deposit.

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 19, 2012.

Residential Tenancy Branch