



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR, MND, MNDC, MNSD

Introduction

This hearing was scheduled in response to the landlord's application for a monetary order as compensation for unpaid rent / compensation for damage to the unit, site or property / compensation for damage or loss under the Act, Regulation or tenancy agreement / and retention of the security deposit.

Agents for the landlord participated in the hearing and gave affirmed testimony. The landlord's agents testified that the application for dispute resolution and the notice of hearing were served on the tenants by way of registered mail at the office forwarding address provided by tenant "BW." Further, in a letter to the Residential Tenancy Branch on office letterhead from tenant "BW" dated February 12, 2012, tenant "BW" acknowledged receipt of the Notice of a Dispute Resolution Hearing. Despite this, neither tenant "BW" nor tenant "SW" appeared at the hearing.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy was from December 3, 2010 to December 31, 2011. Thereafter, the agreement provides that tenancy may continue on a month-to-month basis. Monthly rent of \$2,002.50 was payable in advance on the first day of each month, and a security deposit of \$1,001.25 was collected. A move-in condition inspection report was completed at the start of tenancy.

The tenants vacated the unit on December 31, 2011, and a move-out condition inspection report was completed on that same date. By way of signature on the move-out condition inspection report, tenant "SW" consented to the landlord's withholding of \$675.76 from the security deposit. In the application this is comprised as follows:

\$160.00: *cleaning required in the unit*

\$200.00: *repairs to damaged wall*

\$315.76: *utility bill*

The landlord's agents claimed that as the tenants provided no proper written notice to end the tenancy, the landlord also seeks to recover the loss of rental income for January 2012 in the amount of \$2,002.50. As to efforts made to mitigate the loss of rental income, the landlord's agents testified that online advertising for new renters was commenced immediately following the end of this tenancy. Despite these efforts, the landlord's agents testified that new renters were not found until February 15, 2012.

During the hearing the landlord's agents noted an oversight in their application. In the result, they made an oral request to amend the application to include compensation for unpaid rent of \$1,001.25, representing one half month's rent for December 2011 which was not paid by the tenants. As the tenants were not given notice of this claim in the original application, and as the tenants were not present at the hearing to respond to the landlord's request, the request is hereby denied. The landlord has the option of filing another application for dispute resolution in regard to this particular matter.

The application does not include application to recover the filing fee.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, and provides in part:

45(2) A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of tenancy, and
- (c) 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.

Section 52 of the Act addresses **Form and content of notice to end tenancy**:

52 In order to be effective, a notice to end a tenancy must be in writing and must

- (a) be signed and dated by the landlord or tenant giving the notice,
- (b) give the address of the rental unit,
- (c) state the effective date of the notice,
- (d) except for a notice under section 45(1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

Based on the documentary evidence and the affirmed / undisputed testimony of the landlord's agents, I find that the tenants consented to the landlord's withholding of \$675.76 from the security deposit as set out above.

I also find that the tenants failed to give proper notice to end the tenancy, and that the landlord undertook to mitigate the loss of rental income for January 2012 by advertising for new renters in a timely fashion. Accordingly, I find that the landlord has established entitlement to loss of rental income for January 2012 in the amount of \$2,002.50. The total claim established by the landlord is therefore \$2,678.26 (\$2,002.50 + \$675.76). I order that the landlord retain the security deposit of \$1,001.25, and I grant the landlord a monetary order for the balance owed of \$1,677.01 (\$2,678.26 - \$1,001.25).

Conclusion

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the landlord in the amount of **\$1,677.01**. Should it be necessary, this order may be served on the tenants, 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: March 20, 2012.

Residential Tenancy Branch