



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 dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male tenant (the tenant) who attended the hearing confirmed that he and the female tenant received copies of the landlord's dispute resolution hearing package sent by the landlord by registered mail on February 2, 2012. I am satisfied that the landlord served these documents in accordance with the *Act*.

Issues(s) to be Decided

Is the landlord entitled to an Order of Possession for unpaid rent? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This six-month fixed term tenancy commencing on August 1, 2011 was scheduled to end on January 31, 2012. The landlord testified that monthly rent was set at \$1,500.00, payable in advance on the first. Although the tenant testified that the landlord allowed the tenants to pay their rent on the basis of cheques post-dated to the 15th of each month, he said that he did not have a copy of the residential tenancy agreement. He did not dispute the landlord's sworn testimony that the tenancy agreement required payment on the first of each month, the same date of the month that the tenants commenced their tenancy. The landlord continues to hold the tenants' \$700.00 security deposit paid on July 30, 2011.

The landlord said that the tenant advised him that the tenants could not pay their rent for January 2012. The parties agreed that the tenants vacated the rental premises by January 9, 2012. The tenant confirmed that they did not pay any rent for January 2012 or return the keys to the rental unit. He explained that the landlord had given his oral agreement to an arrangement proposed by the tenant on December 28, 2012 whereby the tenants would not pay rent for January 2012 if the landlord was successful in obtaining a tenant by January 15, 2012. The tenant said under this arrangement the landlord would retain the tenants' security deposit in exchange for the tenants' failure to pay rent for the first half of January 2012. The tenant testified that he did not return the keys because the proposal that the landlord had made with respect to returning the keys would not keep the premises secure during the transition between the tenants and the landlord.

The landlord denied that he entered into an oral agreement with the tenants for the non-payment of rent in January 2012. The landlord testified that he was able to find a new tenant for these premises who took possession on January 15, 2012, for a monthly rent of \$1,400.00. He also said that he had an extra set of keys and was agreeable to allow the tenants to leave the keys inside the rental unit or in the mailbox. He said that he had delivered a copy of his receipt for the keys to the Residential Tenancy Branch on the morning of this hearing.

Analysis

Based on the evidence before me, I am satisfied on a balance of probabilities that the tenants were supposed to pay their monthly rent for January 2012 on January 1, 2012 and did not do so. I am also satisfied that the landlord did not agree to forego obtaining rent for the first two weeks of January 2012.

There is undisputed evidence that the tenants did not pay any rent for January 2012, in contravention of their fixed term tenancy agreement. Their failure to do so, made them liable for rent for January 2012. However, in accordance with section 7(2) of the *Act*, the landlord has taken action to mitigate the tenants' losses arising out of their failure to pay rent by obtaining a new tenant who commenced paying rent of \$1,400.00 per month as of January 15, 2012.

For these reasons, I find that the landlord's entitlement to a monetary award of \$1,500.00 for January 2012 is reduced by \$700.00 (i.e., $\$1,400.00 \times \frac{1}{2} = \700.00) to \$800.00.

In this case, the landlord testified that he had keys to access the rental unit at the end of this tenancy. The landlord has not provided receipts to show that he incurred losses

arising from the tenants' failure to return keys to the rental suite at the end of this tenancy. According to the *Act*, the landlord is responsible for costs involved in changing locks and issuing new keys to new tenants at the end of a tenancy. For these reasons, I dismiss the landlord's application for a monetary award arising out of the tenants' failure to return keys at the end of this tenancy.

I allow the landlord to retain the tenants' security deposit in partial satisfaction of the monetary award issued in this decision.

Since the landlord has been successful in this application, I allow him to recover the \$50.00 filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour in the following terms which allows the landlord to recover unpaid rent and the filing fee for this application and to retain the tenants' security deposit.

Item	Amount
Landlord's Loss of Rent January 2012 (\$1,500.00 - \$700.00 = \$800.00)	\$800.00
Less Security Deposit	-700.00
Recovery of Filing Fee for this application	50.00
Total Monetary Order	\$150.00

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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: April 02, 2012

Residential Tenancy Branch

