



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application for authorization to deduct loss of rent from the tenant's security deposit. The tenants did not appear at the hearing. The landlord testified that the hearing documents were sent to each tenant at their forwarding address via registered mail on March 15, 2012. The tenants forwarding address appears on the move-out inspection report submitted as evidence. The landlord verbally provided two registered mail tracking numbers during the hearing as proof of service and testified the registered mail packages were not returned. I was satisfied the landlord sufficiently served the tenants in a manner that complies with the Act and I proceeded to hear from the landlord without the tenants present.

Issue(s) to be Decided

Is the landlord entitled to recover loss of rent from the tenants, and if so, what is the amount of the loss?

Background and Evidence

The landlord provided the following undisputed evidence:

- The tenancy commenced October 29, 2011 for a fixed term set to expire May 30, 2012;
- The tenants paid a \$325.00 security deposit and a \$200.00 pet deposit;
- The tenants were required to pay rent of \$650.00 on the 1st day of every month;
- The tenants gave verbal notice to end tenancy in the last week of February 2012;
- The move-out inspection was performed and a report prepared on March 1, 2012;
- The tenants authorized, in writing, a deduction of \$195.00 from the security deposit and pet deposit for cleaning and damage;
- The landlord commenced advertising efforts immediately for an advertised rate of \$690.00 per month; and,

- The landlord re-rented the unit starting March 8, 2012 for the monthly rent of \$685.00.

The landlord applied to recover loss of rent of \$230.00 based upon a vacancy of 11 days. During the hearing the landlord acknowledged the error and sought a reduced amount of \$146.00 for loss of rent related to March 1 – 7, 2012.

Documentary evidence provided for this proceeding included: the move-out inspection report; written authorization for deductions from the security deposit; the tenancy agreement; advertising for the rental unit; and, the landlord's record for the incoming tenant.

Analysis

Upon review of the tenancy agreement I accept that the tenants breached a fixed term tenancy by vacating the unit before the expiry date. Upon review of the advertising efforts and the incoming tenant information I am satisfied the landlord acted reasonably in mitigating the loss of rent.

In determining whether the landlord suffered a loss of rent I have considered that the landlord has obtained a greater monthly rent of \$685.00 for the remainder of the fixed term than the landlord would have otherwise received from the tenants. This is consistent with Residential Tenancy Policy Guideline 3: *Claims for Rent and Damages for Loss of Rent* which provides, in part.

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages.

I accept that the seven days of vacancy is a loss of \$146.78 [$\$650.00 \times 7/31$ days]; however, the landlord obtained a benefit of increased rent for March 8, 2012 through May 30, 2012 which I calculate as follows:

March 8 – 31, 2012: $\$685.00 - 650.00 \times 23/31$ days = \$25.97

April 1 – 30, 2012: $\$685.00 - 650.00$ = \$35.00

May 1 – 31, 2012: $\$685.00 - 650.00$ = \$35.00

Total benefit = \$95.97

In light of the above, I find the landlord entitled to recover the loss of rent of \$50.81 [\$146.78 – 95.97] from the tenants.

I am also satisfied the landlord already has the legal authority to deduct \$195.00 from the deposits for cleaning and damage.

Given the limited success of the landlord's claim and the lack of evidence showing the landlord attempted to seek the tenant's consent for recovery of loss of rent, I award the landlord one-half of the filing fee, or \$25.00.

Based upon the foregoing, the landlord is authorized to deduct a total of \$270.81 (\$195.00 + 50.81 + 25.00) from the tenants' deposits and I order the landlord to return the balance of the deposits of \$254.19 to the tenants forthwith.

Provided to the tenants with this decision is a Monetary Order in the amount of \$254.19. If the landlord does not pay the tenants \$254.19 as ordered the tenants may serve the Monetary Order upon the landlord and enforce as necessary.

Conclusion

The landlord is authorized to deduct a total of \$270.81 from the security deposit and pet deposit and the landlord has been ordered to return the balance of \$254.19 to the tenants forthwith. The tenants have been provided a Monetary Order in the amount of \$254.19 to ensure payment is made.

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: June 01, 2012.

Residential Tenancy Branch