

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This is an application filed by the Landlord for a monetary order for unpaid rent, to keep all or part of the security deposit and to recover the filing fee.

Both parties attended the hearing by conference call and gave testimony. As both parties attended the hearing and have acknowledged receiving the evidence submitted by the other party, I am satisfied that both parties have been properly served with the notice of hearing and evidence packages.

Issue(s) to be Decided

Is the Landlord entitled to a monetary order?

Is the Landlord entitled to retain the security deposit?

Background and Evidence

Both parties agree that the Tenancy ended on May 31, 2012 and that a security deposit of \$850.00 was paid at the beginning of Tenancy. Both parties also agreed that the Tenants only occupied unit #1606. Both parties also agreed that the Tenant has never provided a forwarding address in writing for the return of the security deposit.

The Landlord seeks a monetary claim of \$6,500.00. This consists of \$4,200 in the difference of rent paid by the Tenant for the period October 21, 2011 to April 21, 2012 (\$600.00 per month for 7 months). The Landlord states that the Tenant entered into a short term rental contract dated September 23, 2011 for \$2,300.00 per month for the period September 23, 2011 to October 22, 2011(one month) for unit #1606. The Landlord states that the Tenant then entered into a new tenancy agreement for unit #303 for \$1,700.00 per month for a fixed term tenancy of 3 months from October 23, 2011 to January 23, 2012. The Landlord has provided copies of both signed tenancy agreements. The Landlord states at the beginning of the Tenancy of unit #303, a water leak occurred requiring repairs to be made. The Landlord notified the Tenant to remain in unit #1606 for approximately a 2 week period for the repairs to occur, then they could move into unit #303. The Tenant disputes this stating that they were asked to stay in unit #1606 at the request of the Landlord instead of moving into #303 for the rent of

\$1,700.00. The Tenant then stated that the Landlord began to harass the Tenants to raise the rent or force them to move out. The Landlord states that until he served the Tenant's with a 10 day notice to end tenancy for unpaid rent that all of his requests and warnings were done verbally with the Tenant.

The Landlord also seeks \$1,700.00 for April 23 to May 22 rent that remains unpaid by the Tenant. The Tenant has confirmed that he did not pay the rent for "April".

The Landlord is also seeking a pro-rated rent of \$600.00 for May 23 to May 31, 2012 when the Tenants vacated the rental unit. The Tenants have confirmed that no rent was paid during this period.

Analysis

I find on a balance of probabilities that the Landlord has established a claim for a monetary order. Based upon the testimony and documentary evidence of the Landlord, I prefer the evidence of the Landlord over that of Tenant. I find it unreasonable that the Landlord would allow the Tenant to continue to live in higher rated rental unit for a lower cost instead of having them move into unit #303. The Landlord has established a monetary claim of \$6,500.00. The Landlord is also entitled to recovery of the \$50.00 filing fee. I order that the Landlord retain the \$850.00 security deposit in partial satisfaction of the claim. The Landlord is granted a monetary order for \$5,700.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The Landlord is granted a monetary order for \$5,700.00.
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: July 24, 2012.

Residential Tenancy Branch