



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNDC, MNSD, FF

Introduction

This was a cross-application hearing.

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for damage to the rental unit, for unpaid rent; compensation for damage or loss under the Act and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

The tenants applied requesting compensation for damage or loss under the Act and to recover the filing fee cost from the landlord.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matters

There were no issues raised in relation to the evidence submissions made by each party. The parties were informed that I would consider only those emails that were referenced and identified during the hearing.

Issue(s) to be Decided

Are the tenants entitled to compensation for damage or loss in the sum of \$1,100.00 equivalent to April, 2012, rent?

Is the landlord entitled to compensation in the sum of \$1,200.00 as loss of rent revenue?

Is the landlord entitled to compensation in the sum of \$172.06 in unpaid utilities?

Is the landlord entitled to cost for garbage hauling in the sum of \$47.94?

Is either party entitled to filing fee costs?

Background and Evidence

The 11 month fixed-term tenancy commenced on August 15, 2011, rent was \$1,100.00 per month, due on the first day of each month. Heat and electricity were not included. The tenancy was to end on July 15, 2012, at which time it would convert to a month-to-month agreement.

On March 16, 2012, the tenants sent the landlord the first written notice that the tenancy would end on March 31, 2012. The tenants vacated the unit on March 27, 2012 and had the utilities disconnected on March 25, 2012.

Email evidence indicated that the parties reached an agreement that April, 2012, rent would be paid via some work that had been completed by the tenants, through application of the deposit and a payment.

The parties did not dispute that prior to giving written notice the tenant were attempting to locate a new occupant and that the person who took possession of the unit effective May 1, 2012, was located via the advertisement the tenants had placed. The landlord was able to rent the unit at the same rent paid by the tenants.

There was no dispute that during April the landlord had access to the home for repairs they wished to complete and that some of the new occupant's belongings were placed in the garage and home.

The tenants stated that they had legal possession of the unit until the end of April and that they should be refunded April rent paid, as a result of the landlord's breach of the Act. The tenants sent the landlord an email stating friends might use the home at some point during the month; however, they confirmed that would have been difficult given they had disconnected the hydro and gas services.

The landlord claimed the loss of rent revenue in the sum of \$100.00 over a 12 month period, as they would have advertised the unit at a higher rate. Due to the tenant's refusal to allow the landlord to take over the advertisement of the unit, the landlord was denied the opportunity to increase the rent over that paid by the tenants.

The landlord claimed costs for April hydro and gas utilities; as the tenants vacated prior to the end of the fixed-term.

The landlord hauled garbage away that was left behind by the tenants; no verification of this portion of the claim was provided.

Analysis

Section 45(2) of the Act provides:

(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 the 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.

In other words; a tenant may not end a fixed-term tenancy prior to the end date of the tenancy agreement when there has been no breach by the landlord. In this case I find that the tenants have ended the fixed-term agreement prior to the end of the term; July 15, 2012.

Pursuant to section 44 of the Act, I find that the tenancy ended on March 31, 2012; the date set out in the tenant's written notice provided to the landlord on March 16, 2012.

The tenants attempted to mitigate the loss the landlord might suffer as a result of the tenant's breach of the Act; and with their assistance a new occupant was located for May 1, 2012. The tenants paid the equivalent of April rent owed which avoided a loss of rent revenue to the landlord.

I have rejected the tenant's submission that they had the right to occupy the unit after March 31, 2012. I have based this finding on the actions of the tenants when they disconnected the gas and hydro services on March 25, 2012; an action that clearly indicated they no longer wished to occupy the unit; combined with their notice they would end the tenancy effective March 31, 2012. The tenants removed all of their belongings, indicating they no longer possessed the unit. Therefore, as the tenants have not suffered a loss of use of the rental unit; which was vacated prior to the end of March 31, 2012, I find their claim for compensation is dismissed.

I find that the claim for loss of rent revenue is dismissed. The tenants have previously provided the landlord with compensation for loss of April rent revenue. The landlord located a new occupant effective May 1, 2012, at the same rent level provided in the fixed-term agreement signed by the tenants. The desire of the landlord to obtain additional monthly rent was the responsibility of the landlord at the time they met the new occupant and signed an agreement with that person.

In the absence of verification for the cost of hauling garbage I find that the portion of the landlord's claim is dismissed.

As neither claim has merit, I decline filing fee costs to either party.

Conclusion

Both applications are dismissed.

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 03, 2012.

Residential Tenancy Branch