



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with the landlord's application for a Monetary Order for unpaid rent. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

I amended the application to reflect the claim against the security deposit as the details of dispute indicated the landlord had deducted the security deposit in the monetary claim against the tenant.

Issue(s) to be Decided

1. Are the landlords entitled to recover unpaid rent for the months of July and August 2012 from the tenant?
2. Are the landlords authorized to retain the security deposit in partial satisfaction of the unpaid rent?

Background and Evidence

The following information was undisputed by the parties:

- The tenancy commenced April 1, 2011 and the tenant paid a \$375.00 security deposit.
- The tenant was required to pay rent of \$750.00 on the 1st day of every month on a month-to-month basis.
- On June 26, 2012 the tenant informed the landlord that he intended to end his tenancy and the landlord requested written notice to end the tenancy.
- On July 1, 2012 the landlords were provided a written notice to end the tenancy; the tenant's grandparent participated in a move-out inspection with the landlord; and keys were returned to the landlord.
- The tenant's notice included a forwarding address and the landlords filed this application July 13, 2012.

- The landlord and tenant had agreed that the tenant could apply the security deposit to rent owed for July 2012.

The landlords had applied to recover unpaid rent for July 2012 and August 2012 in the amount of \$1,125.00 after deducting the security deposit. During the hearing the landlord acknowledged that new tenants moved into the unit in mid-August 2012 and rent was collected from them starting August 15, 2012. The landlord did not object to reducing the claim accordingly.

The landlord described how she proceeded to place advertisements in the local newspaper once written notice was received from the tenant. The landlord tried to find replacement tenants for July 15, 2012 and August 1, 2012 but was unsuccessful. Replacement tenants were found for September 1, 2012 but then they moved in early and paid the landlords rent starting August 15, 2012.

The tenant submitted that when he agreed the landlords could keep his security deposit he thought he had satisfied his obligations to the landlords. The landlords did not attempt to contact him immediately after the move-out inspection was conducted; however, the tenant acknowledged the landlord phoned him on July 11, 2012 and he did not return the landlord's call.

Analysis

Where a tenant wishes to end a month-to-month tenancy the tenant is required to give the landlord at least one full month of written notice pursuant to section 45 of the Act. The effective date on the written notice must be no earlier than:

- at least one month after the notice is received by the landlord; and
- the day before rent is payable under the tenancy agreement.

Where rent is payable on the 1st of every month, a notice to end tenancy received by the landlord on July 1, 2012 would have an effective date of August 31, 2012 in order to comply with the Act. Accordingly, the tenant may be held responsible for unpaid rent or loss of rent up until August 31, 2012, provided the landlord takes reasonable steps to minimize the loss of rent.

Based upon the landlord's undisputed testimony, I am satisfied the landlords took reasonable action to re-rent the unit. I find insufficient evidence the landlords agreed or otherwise waived their entitlement to make a claim for unpaid rent or loss of rent against the tenant. Therefore, I grant the landlords' request to recover unpaid rent from the

tenant for July 2012 and August 2012 and I authorize the landlords to retain the security deposit in partial satisfaction of the rent owed. I further award the \$50.00 filing fee to the landlord.

Taking into account the landlords started collecting rent from the new tenants August 15, 2012 I have reduced the landlords' award by one-half of the monthly rent collected for August 2012.

In light of the above, I provide the landlords with a Monetary Order to serve upon the tenant in the total amount of \$800.00, calculated as follows:

Unpaid rent – July 2012	\$ 750.00
Less: security deposit	(375.00)
Loss of rent – August 2012	375.00
Filing fee	<u>50.00</u>
Monetary Order	\$ 800.00

Conclusion

The landlords have been provided a Monetary Order in the amount of \$800.00 to serve upon the tenant and enforce as necessary.

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: September 27, 2012.

Residential Tenancy Branch