



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord and both tenants.

The landlord clarified at the start of the hearing that he is seeking to retain the security deposit from the tenants solely as compensation for the tenant's failure to provide sufficient notice to end the tenancy and not for any issues related to the condition of the rental unit at the end of the tenancy.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord has provided the following documents into evidence:

- A copy of a tenancy agreement signed by both parties on July 1, 2012 for a month to month beginning on July 1, 2012 for a monthly rent of \$1,250.00 due on the 1st of each month with a security deposit of \$625.00 paid; and
- A copy of a handwritten note from the tenants to the landlord dated July 2012 advising the landlord of the tenants' intention to terminate their rental agreement August 1, 2012.

The parties agree the tenants provided the landlord a written notice to end tenancy on July 4, 2012 to be effective August 1, 2012 but the tenants testified the landlord was aware of their intention on July 1, 2012.

The landlord testified that he had a new tenant move into the rental unit on August 2, 2012 and the new tenant paid the landlord \$1,300.00 for the month of August as per the new tenancy agreement with the new tenant.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(1) of the *Act* stipulates that a tenant may end a tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice and is the day before the day in the month that rent is payable under the tenancy agreement.

From the tenancy agreement I find that rent was due on the 1st of each month and as such a notice to end tenancy issued by the tenants on July 4, 2012 would have an effective date of no earlier than August 31, 2012. As such, I find the tenants have violated the *Act* and tenancy agreement and are responsible for the payment of rent for the month of August 2012.

However, as the landlord was able to re-rent the rental unit and by his own testimony received even more than the amount payable under this tenancy agreement I find that the landlord has suffered no loss as a result of the tenants' violation of the *Act* and tenancy agreement, and in fact the landlord profited by being able to obtain more rent for the unit.

Conclusion

For the reasons noted above, I dismiss the landlord's Application in its entirety.

I find the tenants are entitled to return of their security deposit and I grant them a monetary order in the amount of **\$625.00**.

This order must be served on the landlord. If the landlord fails to comply with this order the tenants may file the order in the Provincial Court (Small Claims) and be enforced as an order 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: October 25, 2012.

Residential Tenancy Branch