



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlords' application for dispute resolution under the *Residential Tenancy Act* (the "Act") for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation to tenancy agreement, to keep all or part of the security deposit, and to recover the filing fee.

The landlords appeared at the teleconference hearing and gave affirmed testimony. During the hearing the landlords were given the opportunity to provide their evidence orally. A summary of the testimony is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the "Notice") was considered. The landlords provided affirmed testimony that the Notice was served on the tenants by registered mail on September 6, 2012. The landlords provided a registered mail receipt with tracking number as evidence and confirmed that the name and address matched the name of the tenants and the forwarding address provided by the tenants. Documents sent by registered mail are deemed served five days after mailing under the *Act*. I find the tenants were duly served on the fifth day after mailing, in accordance with the *Act*.

Preliminary and Procedural Matters

At the start of the hearing, the landlords confirmed that they were withdrawing their claim against the two female tenants, RM and KR, as the two female tenants complied with the requirements of their mutual agreement to end the fixed term tenancy. The landlords clarified that they were proceeding with their claim against the male tenant who they allege did not comply with the mutual agreement to end the fixed term tenancy.

The landlords clarified that they were no longer seeking \$2,850.00 as indicated in their original monetary claim. The landlords amended their application to \$530.00 owing for unpaid rent for September 2012 after signing a fixed term tenancy agreement, plus the

cost of the filing fee of \$50.00. The landlords clarified that if the male tenant had paid the \$210.00 as agreed upon in their mutual agreement to end the fixed term tenancy, they would have cancelled the arbitration hearing. As the male tenant failed to make the agreed upon payments, they are seeking compensation for their loss in the amount of \$530.00.

Issue to be Decided

- Are the landlords entitled to a monetary order under the *Act*?

Background and Evidence

The parties signed a 1 year fixed term tenancy agreement on July 30, 2012 which indicated a tenancy start date of September 1, 2012, ending September 1, 2013. Monthly rent in the amount of \$1,900.00 was due on the first date of each month. The tenants paid a \$950.00 security deposit at the start of the tenancy. The pet damage deposit was not paid by the tenants.

On August 20, 2012, the landlords stated they received a phone call from the tenants indicating that they would not be moving into the rental unit as they were no longer together.

On September 30, 2012, the parties signed a mutual agreement to end a fixed term tenancy which stated that the \$950.00 security deposit would be forfeited by the tenants to the landlords towards partial payment of the \$1,900.00 unpaid rent for September 2012. The three tenants also agreed in writing to making 3 additional payments of \$70.00 each, per person for a total of \$210.00 per tenant towards the unpaid September 2012 rent, in full satisfaction of their mutual agreement to end a fixed term tenancy.

The landlords testified that the 2 female tenants satisfied their agreements, and were removed from this application as a result. The landlords stated that the male tenant did not comply with their agreement and has not made any payments towards the unpaid rent, and as a result, they have suffered a loss of \$530.00 plus the filing fee as follows:

September 2012 rent due	\$1,900.00
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Less security deposit of \$950.00	(\$950.00)
Less \$210.00 paid by female tenant RM	(\$210.00)
Less \$210.00 paid by female tenant KR	(\$210.00)
Subtotal	\$530.00
Filing fee	\$50.00
Total amount being claimed by landlords	\$580.00

The landlords testified that they were able to find new tenants for November 2012, however, had to lower the rent by \$100.00 per month to find new tenants. The landlords stated that they are not seeking a loss for the month of October 2012 or the remaining 11 months of the fixed term tenancy at a lower rent differential, considering they had to lower the rent for their new tenants.

Analysis

Based on details of the application and the oral testimony provided during the hearing, and on the balance of probabilities, I find the following.

Section 16 of the *Act* states:

Start of rights and obligations under tenancy agreement

- 16** The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, **whether or not the tenant ever occupies the rental unit.**

[emphasis added]

I find that the tenants signed a fixed term tenancy and as a result, were required to pay rent for September 2012 in the amount of \$1,900.00. By mutual agreement, however, the landlords gave the tenants the ability to end the fixed term tenancy early. I accept the undisputed testimony of the landlords that the male tenant did not comply with the mutual agreement by failing to pay what was agreed upon in writing and therefore, is responsible for the remaining rent owed for September 2012, in the amount of **\$530.00**.

I find the landlords have met the burden of proof by proving on the balance of probabilities that the male tenant breached their mutual agreement to end the fixed term tenancy, and that the landlords suffered a loss of \$530.00 as a result.

As the parties have already agreed that the security deposit would be used towards the unpaid rent for September 2012, **I find** that the security deposit balance owing to the tenants is \$0.00.

As the landlords were successful in their application, **I grant** the landlords the recovery of the filing fee in the amount of **\$50.00**. **I find** that the landlords have established a total monetary claim of **\$580.00** comprised of \$530.00 in unpaid rent, and the \$50.00 filing fee.

I grant the landlords a monetary order against the male tenant under section 67 in the amount of **\$580.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I grant the landlords a monetary order against the male tenant in the amount of \$580.00.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: November 19, 2012

Residential Tenancy Branch