



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent and to recover the filing fee from the tenants for the cost of this application.

The landlords and one of the tenants attended the conference call hearing, gave sworn testimony. However part way through the hearing the tenant became angry and left the conference call. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlord was permitted to provide additional evidence after the hearing had concluded. All evidence and testimony has been reviewed and are considered in this decision.

Issue(s) to be Decided

Are the landlords entitled to a Monetary Order for unpaid rent?

Background and Evidence

The parties agreed that this tenancy started on August 01, 2012. This was a fixed term tenancy for 12 months and was due to expire on July 31, 2013. Rent for this unit was agreed at \$1,650.00 although the tenant states the parties had also agreed to lower the rent to \$1,400.00 for August, 2012. The tenant paid a security deposit of \$825.00 on August 12, 2012.

The landlords testify that the tenants moved out on September 10, 2012 without proper Notice and breached the terms of the fixed term lease. The landlord testifies that the tenants wrote on the tenancy Agreement that rent would be reduced to \$1,400.00 for August however the landlords did not initial this alteration to the agreement. The landlords' testify that they had a verbal agreement that the rent would be reduced by \$250.00 per month if the tenants did some light work in the unit such as carpentry work however the scope of work was to be decided and agreed in advance and the parties had agreed to meet in September to work the details out and put it in writing. The tenants did not complete any work to the property in August but still only paid \$1,400.00. Therefore the landlords seek to recover \$250.00 for August, 2012 outstanding rent.

The landlords testify that they advertised the unit for rent on internet sites and put signs up in the local neighbourhood. The first advertisement went out on Craig's List on September 14, 2012 and the landlords also hired a neighbour to act as a property manager to ensure the unit was re-rented as quickly as possible as the landlords do not live locally. The unit was not re-rented until December 01, 2012. The landlords therefore seek to recover a loss of rent for September and October, 2012 and have not applied to recover rent for November as they thought they would be able to re-rent the unit by then. The total amount of unpaid rent and loss of rental income is \$3,550.00.

The tenant disputes the landlords' claims the tenant testifies that the landlords had agreed to lower the rent for August to \$1,400.00 because the landlords still had their belongings in the basement. The tenant testifies that they have e-mail correspondence between them where the landlords agreed the rent would be less. The tenant testifies that the landlords said the tenancy agreement was an interim agreement and would be changed. The tenant testifies that they agreed to pay \$1,400.00 because they wanted to rent the whole house and they could not do so because the landlords still had their belongings stored in half of the basement. The landlords had told the tenants that they would be over after they had returned to town to remove their belongings. The tenant

testifies that they moved out of the unit on September 10, 2012 and told the landlord by e-mail that the landlords had the security deposit for rent in partial payment.

The tenant testifies that they did some work on the property in August such as property management stuff and work to reinforce the railings. At this point the tenant became very antagonistic and angry and left the hearing.

The landlords dispute the tenant's claims. The landlords' testify that this is a two story house and the basement is divided into two separate areas. The back area was part of the tenancy agreement and the front area was used by the landlords for storage. The unit including the back basement area has always been rented for \$1,650.00. The tenants expressed an interest in renting the entire property and the landlords said they would see about moving their belongings out over the next few months. The tenants had also expressed an interest in a rent to own agreement so the landlords would have agreed to allow the tenants to rent the whole property for the rent of \$1,650.00 and a new agreement would have been drawn up. However the tenants vacated the rental unit.

The landlords' testify that during August the male tenant was out of town and there is no evidence of any work having been done to the property and no work was agreed upon by the landlords. The tenants made the alteration on the tenancy agreement before returning it to the landlords however as the landlords had not finalized an agreement for work in August they did not initial the amendment on the tenancy agreement to allow the tenants to reduce their rent.

The landlords have provided a copy of the tenancy agreement signed by both parties, documentation showing the tenants rent cheque for September was returned due to insufficient funds and e-mail correspondence between the parties.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 45(2) of the *Residential Tenancy Act (Act)* which states:

(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.

As the tenancy agreement in place is considered to be a legally binding document the tenants were therefore not entitled to end the tenancy before the end of the fixed term of July 31, 2013. As the tenants did vacate the unit on September 10, 2012 I find the tenants are in breach of the agreement.

A tenancy agreement is a legally binding document and cannot be altered unless both parties agree in writing to the alteration pursuant to s. 14(2) of the *Act*. As the landlords did not initial the altered section of the tenancy agreement in which the tenants had written that the rent was to be reduced to \$1,400.00 for August, 2012 there is no evidence that the landlords did agree to reduce the rent for August, 2012. Therefore that altered section has no bearing on the tenancy agreement which shows that rent is \$1,650.00 per month. The landlords did state that they had verbally agreed to reduce the rent but only in circumstances in which they agreed any work up to the sum of \$250.00 per month and the tenant has provided no evidence to show the landlord agreed to any work for August or evidence of any work having been done during August, 2012. Consequently I find the landlords are entitled to recover unpaid rent for August of **\$250.00**.

In accordance with s. 7 (2) of the *Act* the landlord must mitigate any loss; which in this instance means by showing what steps the landlords took to re-rent the unit . I am satisfied with the landlords' testimony that they advertised the unit for rent as quickly as possible starting on September 14, 2012. Therefore, I find the landlords are entitled to recover unpaid rent for September and October as claimed to the sum of **\$3,300.00**.

The landlord was permitted to send additional evidence to be considered after the tenant spoke about e-mail correspondence between the parties. Contained within an e-mail from the tenant is authorisation for the landlords to keep the security deposit in partial payment for Septembers rent. As a result of this I find the landlords are entitled to retain the security deposit of \$825.00 and this has been deducted from the landlords claim for Septembers rent.

As the landlords have been successful with their claim I find the landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords pursuant to s. 67 and 72(1) of the *Act* as follows:

Unpaid rent August, 2012	\$250.00
Filing fee	\$50.00
Less security deposit	(-\$825.00)
Total amount due to the landlord	\$2,775.00

Conclusion

I HEREBY FIND in favor of the landlord's monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$2,775.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: December 06, 2012.

Residential Tenancy Branch