

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing was convened as a result of the landlord's application for dispute resolution seeking remedy under the Residential Tenancy Act (the "Act"). The landlord applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent and utilities, authority to retain the tenants' security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and for recovery of the filing fee.

An agent for the landlord (the "agent") appeared at the teleconference hearing and gave affirmed testimony. During the hearing the agent was 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 agent testified that the Notice was served on the female tenant in person on November 28, 2012 at 5:13 p.m. The agent stated that she served the female tenant with two packages, the second package of which was addressed to the male tenant. I advised the agent that I was not satisfied that the male tenant was served in accordance with the *Act*, and as a result advised the agent that if she wished to proceed, any monetary order resulting from this decision would name the female tenant only. The agent stated that she wished to proceed against the female tenant only. As a result, the male tenant will be excluded from any resulting monetary order resulting from this decision.

I find the female tenant was duly served on with the Notice on November 28, 2012 based on the undisputed testimony of the landlord.

Preliminary Matters

At the outset of the hearing, the landlord stated that she was withdrawing her request for an order of possession as the tenants vacated the rental unit on or about December 3, 2012. As a result, the hearing proceeded with consideration of the landlord's monetary claim.

During the hearing, the agent stated that since filing the application, the landlord was able to secure new tenants who moved into the rental unit on December 11, 2012. The

agent requested to reduce the amount being claimed from \$4,152.00 to \$2,639.98 which will be described later in this decision.

Issues to be Decided

- Is the landlord entitled to a monetary order for unpaid rent or utilities, or money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and if so, in what amount?
- What should happen to the tenants' security deposit and pet damage deposit?

Background and Evidence

A fixed term tenancy began on January 1, 2012 and was to expire on December 31, 2012. Rent in the amount of \$1,650.00 was due on the first day of each month. The tenants paid \$825.00 as a security deposit and \$575.00 as a pet damage deposit at the start of the tenancy. The agent testified that the tenants vacated the rental unit on or about December 3, 2012.

The agent requested to have the original monetary claim of \$4,152.00 reduced to \$2,639.98 comprised of the following:

Outstanding water bills	\$157.68
November 2012 unpaid rent	\$1,650.00
December 1, 2012 to December 10, 2012 portion of rent (landlord was able to minimize loss by securing new tenants for December 11, 2012) calculated at \$1,650.00 monthly rent divided by 31 days in December = \$53.23 daily rate multiplied by 10 days)	\$532.30
Reduced liquidated damages fee (reduced from \$500.00 as indicated in the tenancy agreement)	\$250.00
Two late fees of \$25.00	\$50.00
TOTAL	\$2,639.98

The agent testified that on or about November 20, 2012, the tenants advised that they would not be renewing their lease and would be vacating the rental unit and would not be paying rent for November 2012. The agent stated that the tenants failed to pay rent for November 2012 and December 2012, however, the agent was able to minimize the loss to the landlord by securing new tenants who moved into the rental unit on

December 11, 2012. The agent stated that no forwarding address has been provided by the tenants since they vacated the rental unit.

The agent stated that the tenants have not paid \$157.68 from previous water bills comprised of the following amounts:

1. \$41.40
2. \$36.62
3. \$44.58
4. \$35.08

The water bill amounts were supported by the ledger submitted in evidence, with the exception of #4 above in the amount of \$35.08. The agent stated that the final amount of \$35.08 was not known as it was not received until after filing their application. The ledger shows the tenant had made earlier payments for water but had vacated leaving money owing for water.

The agent referred to section 26 of the tenancy agreement regarding liquidated damages, and to section 21 regarding late fees. The liquidated damages amount is indicated as \$500.00 in the tenancy agreement, while the late fee amount is listed as \$25.00 for each late payment.

Analysis

Based on the documentary evidence and the undisputed oral testimony of the agent, and on the balance of probabilities, I find the following.

Landlord's claim for unpaid rent – The tenants failed to pay rent for November 2012 in the amount of \$1,650.00 and for December 2012, which the landlord was able to reduce their loss to \$532.30 comprised of a daily rate of \$53.23 per day for the first ten days of December 2012 until the new tenant moved into the rental unit on December 11, 2012.

Based on the above, I find that the tenants have failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month. I find the landlord has met the burden of proof and I award the landlord a monetary claim of **\$2,182.30** comprised of \$1,650.00 for unpaid November 2012 rent, and \$532.50 for the first ten days of December 2012 rent.

Efforts by landlord to secure new tenants and mitigate loss – The agent was able to minimize the loss of full December 2012 rent by securing new tenants who moved into the rental unit on December 11, 2012.

Section 7 of the *Act*, states:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Given the above, I find the landlord minimized the loss of December 2012 rent as required by section 7 of the *Act*.

Landlord's claim for liquidated damages and late fees – Section 26 of the tenancy agreement covers liquidated damages which the agent reduced during the hearing from \$500.00 indicated on the tenancy agreement to \$250.00. Section 21 of the tenancy agreement covers late fees and indicates that late rental payments are subject to a fee of \$25.00. The landlord has claimed \$25.00 for the months of November 2012 and December 2012.

I find that the landlord has met the burden of proof and is entitled to the reduced **\$250.00** liquidated damages claim as the tenants vacated the rental until without paying rent when it was due and violated the tenancy agreement as a result. I find that the landlord is entitled to two late fees at \$25.00 for each late fee for a total of **\$50.00** in late fees.

Landlord's claim for unpaid utilities – The ledger submitted by the landlord supports the amount being claimed for unpaid water by the tenants in the amount of \$157.68. The only amount not included in the ledger is the most recent water bill in the amount of \$35.08. On the balance of probabilities, I find it reasonable that that amount is owing as it is consistent with the other bills that were not paid and is the lowest amount of all four amounts making up a total water bill amount owing of \$157.68. I find the landlord is entitled to \$157.68 for unpaid water bills as a result.

As the landlord has succeeded with their application, **I grant** the landlord recovery of the filing fee in the amount of **\$50.00**

The tenants' security deposit of \$825.00 and pet damage deposit of \$575.00 has accrued no interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit and pet damage deposit as follows:

Outstanding water bills	\$157.68
November 2012 unpaid rent	\$1,650.00
December 1, 2012 to December 10, 2012 portion of rent (landlord was able to minimize loss by securing new tenants for December 11, 2012) calculated at \$1,650.00 monthly rent divided by 31 days in December = \$53.23 daily rate multiplied by 10 days)	\$532.30
Reduced liquidated damages fee (reduced from \$500.00 as indicated in the tenancy agreement)	\$250.00
Two late fees of \$25.00	\$50.00
Filing fee	\$50.00
Subtotal	\$2,689.98
<i>(Less tenants' security deposit of \$825.00)</i>	<i>-(\$825.00)</i>
<i>(Less tenants' pet damage deposit of \$575.00)</i>	<i>-(\$575.00)</i>
TOTAL	\$1,289.98

Conclusion

I find that the landlord has established a total monetary claim of **\$2,689.98**. I authorize the landlord to retain the full security deposit of \$825.00 and full pet damage deposit of \$575.00 in partial satisfaction of the claim. I grant the landlord a monetary order under section 67 for the balance owing to the landlord in the amount of **\$1,289.98**. This order must be served on the female tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: January 09, 2013.