



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords for a monetary order for unpaid rent.

Both parties appeared, gave testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and make submission at the hearing.

Issues to be Decided

Are the landlords entitled to a monetary order for unpaid rent?

Background and Evidence

The parties entered into a fixed term tenancy which began on August 8, 2012 and was to expire on August 8, 2013. Rent in the amount of \$3,200.00 was payable on the eight day of each month. A security deposit of \$1,600.00 and \$1,600.00 pet damage deposit were paid by the tenants.

The tenants provided a letter to the landlord on February 7, 2013, terminating the lease on March 8, 2013. The tenants were put on notice that the landlords are seeking compensation for loss of revenue as filed in the application dated February 14, 2013.

The parties agreed to meet at the rental unit on March 8, 2013, at 1:00pm to perform the move-out inspection.

The landlords claim as follows:

a.	Rent for February 2013	\$3,200.00
b.	Loss of revenue for March 2013 and April 2013	\$6,400.00
c.	Filing Fee	\$ 100.00
	Total claimed	\$9,700.00

The tenants testified the landlords deposited the rent cheque for February 2013, before the date posted on the cheque and their bank did not honour the cheque.

The tenants testified that due to them giving notice to end the tenancy on March 8, 2013, they decided not to issue a new cheque for rent and told the landlord that they could retain the deposits to off-set the unpaid rent for February 2013.

The landlords testified that they did not give the tenants permission to apply the deposits towards rent.

The landlords testified that the tenants are breaching the fixed term agreement and they are seeking compensation for loss of rent for March and April 2013.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard.

To prove a loss and have one party pay for the loss requires the claiming party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails. In this case, the landlords have the burden of proof to prove their claim.

Section 26 of the Residential Tenancy Act states:

26 (1) A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

In this case, the landlords deposited the tenants' rent cheque prior to the date posted on the cheque and as a result the cheque was not honoured by the tenants' bank.

The tenants did not replace the cheque and instructed the landlords that the security deposit and pet damage deposit would be sufficient to off-set the outstanding rent owed for February 2013.

Section 17 of the Residential Tenancy Policy Guidelines states:

A tenant may not apply all or part of the security deposit to rent without the written consent of the landlord.

In this case, the landlords did not give the tenants permission to apply the security deposit and pet deposit towards rent. As a result, I find the tenants have breached section 26 of the Act, when they failed to pay rent due after the cheque was not honoured by their bank. Therefore, I find the landlords are entitled to a monetary order for unpaid rent for February 2013, in the amount of **\$3,200.00**.

The tenants provided notice to end a fixed term agreement effective March 8, 2013.

Section 45 of the Residential Tenancy Act states:

45 (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,

The tenants are cautioned that Section 45 of the Act states they may not end a tenancy earlier than specified in the tenancy agreement, and may be liable to compensate the landlords for any loss of rent up to the earliest time that the tenants could have legally ended the tenancy.

I do not find it is necessary at this time to consider the tenants' notice to end tenancy further as rent for March and April 2013, are not yet due. I find the landlords' request for compensation for March and April 2013, to be premature.

Further, under section 7(2) of the Act the landlords' have a duty to do whatever is reasonable to minimize the damage or loss. The landlords' claim for loss of revenue is dismissed with leave to reapply.

I find that the landlords have established a total monetary claim of **\$3,250.00** comprised of unpaid rent for February 2013, and as the landlords' application was partially successful the filing fee recoverable has been reduced to \$50.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As the tenancy has not legally ended in accordance with the Act, the security deposit will be dealt with in accordance with section 38 of the Act at the end of tenancy.

Conclusion

The landlords are granted a monetary order for unpaid rent.

The landlords are granted leave to reapply for loss revenue.

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: February 27, 2013

Residential Tenancy Branch

