



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC

Introduction

This hearing was convened by way of conference call in response to the landlords application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act* (*Act*), regulations or tenancy agreement. At the hearing the landlord withdrew the application for a Monetary Order for money owed or compensation for damage or loss under the *Act*, regulations or tenancy agreement.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on January 09, 2013. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order for unpaid rent or utilities?

- Is the landlord permitted to keep the security deposit?

Background and Evidence

The landlord testifies that this tenancy started on October 01, 2012 for a fixed term which was due to expire on September 31, 2013. Rent for this unit was \$1,100.00 per month and was due on the first day of each month. Rent included water but no other utilities as shown on the tenancy agreement provided in evidence. The tenant paid a security deposit of \$550.00 on September 10, 2012.

The landlord testifies that the tenant gave the landlord a letter on January 01, 2013. This letter informed the landlord that the tenant was ending the tenancy on January 06, 2013 and stated reasons to do so. The tenant also provided a forwarding address for the landlord in that letter for the landlord to return the security deposit. The tenant did not pay rent for January, 2013. The landlord has provided a copy of the letter in evidence.

The landlord testifies that as the tenant was in a fixed term tenancy, the tenant could not give the landlord notice to end the tenancy until the fixed term expired. The notice given was also insufficient as it was not one clear months notice. The landlord testifies that the unit was re-rented for February 01, 2013 and therefore the landlord seeks to recover unpaid rent for January, 2013 of \$1,100.00.

The landlord testifies that the utility bills were in the tenants name and the landlord does not yet know if he will have to pay these utility bills. The landlord has not yet been sent anything from the utility companies to determine what amounts, are owed by the tenant. The landlord therefore withdraws this section of the claim for utilities at this time.

The landlord seeks to keep the security deposit to offset against the unpaid rent.

Analysis

Section 26 of the Act states:

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.

Section 45(2) of the Act states:

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.

Consequently, I find the tenant ended the tenancy before the end of the fixed term. However as the landlord was able to re-rent the unit for February 01, 2013 the landlord has only lost rental income for January, 2013. I therefore find in favor of the landlords amended monetary claim for unpaid rent for January, 2013 of **\$1,100.00**.

I Order the landlord to keep the security deposit of **\$550.00** pursuant to s. 38(4)(b) of the Act. This sum will be offset against the unpaid rent for January.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlord's decision will be accompanied by a Monetary Order for **\$550.00**. The order must be served on the respondent and is enforceable through the Provincial Court as an order of that Court.

The landlord is at liberty to reapply for unpaid utilities in the event the landlord is made reasonable for utilities by the utility companies.

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: March 21, 2013

Residential Tenancy Branch

