



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for unpaid rent and for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover his filing fee for this application from the tenants pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, to make submissions and to cross-examine one another. The male tenant (the tenant) confirmed that they received the landlord's 10 Day Notice to End Tenancy for Unpaid Rent (the 10 Day Notice), sent by the landlord by registered mail on or about August 10, 2012. The tenant also confirmed that on January 20 or 21, 2013, the tenants received a copy of the landlord's dispute resolution hearing package sent by the landlord by registered mail on January 18, 2013. I am satisfied that the landlord served the above documents and both parties served their written evidence to one another in accordance with the *Act*.

During the hearing, the parties confirmed that the tenants paid one-half of their August 2012 rent to the landlord and the parties agreed that the tenants allowed the landlord to apply their security deposit against the remainder of their August 2012 rent. The landlord agreed with the calculations submitted by the tenants that indicated that the actual amount of outstanding rent until the end of their fixed term tenancy was \$8,925.00 rather than the \$10,710.00 claimed in the landlord's application. The landlord amended the requested amount of his monetary award to \$8,925.00 plus recovery of his filing fee for his application.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid rent and losses arising out of this tenancy? Is the landlord entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This one-year fixed term tenancy commenced on January 15, 2012. Monthly rent was set at \$1,785.00, payable in advance on the 15th of each month, plus heat and hydro. Although the tenants paid a \$892.50 security deposit on January 4, 2012, the parties agreed that the tenants have given the landlord permission to retain that deposit to offset one-half of their rent payment for August 15, 2012.

The parties agreed that the tenants advised the landlord in early June 2012 that they would not be able to complete their tenancy. The landlord entered undisputed written evidence that the tenants vacated the premises by July 31, 2012 and returned the keys to the rental premises to the landlord at that time. Although the tenants assisted the landlord in attempting to identify new tenants or sub-tenants to take over the remainder of their fixed term tenancy agreement, these efforts and the efforts of the landlord proved unsuccessful as the premises remained unoccupied for the duration of the fixed term tenancy.

The landlord applied for a monetary award of \$10, 710.00 (reduced at the hearing to \$8,925.00) for unpaid rent arising out of the duration of this tenancy.

The tenants submitted an extensive binder of material outlining their assertion that the landlord had not undertaken adequate measures to mitigate the tenants' losses arising out of this tenancy.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to resolve all issues arising out of the landlord's application and this tenancy under the following terms:

1. The tenants agreed to send the landlord a negotiable cheque in the amount of \$2,500.00 by registered mail on April 11, 2013.

2. The landlord agreed that the tenants' provision of the above \$2,500.00 payment constituted a complete resolution of all of his monetary claims against the tenants arising out of this tenancy.
3. The tenants agreed to let the landlord keep their security deposit.
4. Both parties agreed that this settlement agreement constituted a final and binding resolution of all issues arising out of this tenancy.

Conclusion

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlord's favour in the amount of \$2,500.00. I deliver this Order to the landlord in support of the above agreement for use **only** in the event that the tenants do not abide by the terms of the above settlement. The landlord is provided with these Orders in the above terms and the tenant(s) must be served with a copy of these Orders as soon as possible after a failure to comply with the terms of the above settlement agreement. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders of that Court. As per their settlement agreement, I also allow the landlord to retain the tenants' security deposit.

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: April 11, 2013

Residential Tenancy Branch