



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order and an order allowing retention of the security deposit and pet damage deposit in partial satisfaction of the claim. Both parties appeared and had an opportunity to be heard.

Issue(s) to be Decided

Are the landlords entitled to a monetary order and, if so, in what amount?

Background and Evidence

This one year fixed term tenancy commenced February 15, 2012. The monthly rent of \$1780.00 was due on the first day of the month. The tenants paid a security deposit of \$890.00 and a pet damage deposit of \$200.00. The tenants were also responsible for all utilities.

There was also an agreement that if the tenants kept up the yard they would be credited \$60.00 each month. It is acknowledged that the tenants fulfilled their part of the bargain every month they lived there.

A move-in inspection was conducted and a move-in condition inspection report completed on February 14, 2012.

During the tenancy both tenants suffered injuries that made it impossible for them to work. As a result they could not afford the rental unit. They only paid a portion of the rent in July, August and September. The landlord testified they did not take any action to enforce the arrears, such as serving the tenants with a 10 Notice to End Tenancy for Non-Payment of Rent, because the agreement was that the tenants would try to pay the arrears when they were working again.

In July the tenants paid \$1350.00 towards rent and received a credit of \$60.00 leaving arrears for that month of \$370.00.

In August the tenants paid \$1200.00 towards rent and received a credit of \$60.00 leaving arrears for that month of \$520.00.

In September the tenants paid \$1400.00 towards rent and received a credit of \$60.00 leaving arrears for that month of \$320.00.

In total the arrears for July, August and September are \$1210.00.

The tenants moved out of the rental unit on or before October 1, 2012. The tenant testified that they sent an e-mail just prior to moving; the landlord said they got a text message after the tenants had moved.

When the landlords took possession of the rental unit they found that the tenants had not cleaned as thoroughly as they could, some items had been left behind, and there was some damage. In particular, the tenants' dog had caused considerable damage in one bedroom. The carpet in that room had to be replaced, as did the moldings. Other repairs included some patching of walls, fixing a closet door, repairing a towel bar, touch-up painting and replacing two venetian blinds.

The landlords hired someone to do all the repairs, clean the house, obtain materials, and haul garbage away. In total the landlords were charged for 23 hours of labour at \$35.00 per hour; materials in the amount of \$624.10; mileage in the amount of \$106.40; and dump fees in the amount of \$12.00 for a total of \$1547.50. IN addition, the landlords paid \$56.00 to rent a steam cleaner. The tenant did not dispute the landlords' claim for cleaning and repairs.

Once the home had been cleaned the landlords started advertising it for occupation as of November 1. The landlord testified they had very little response in November, more inquiries in December and were finally able to re-rent it as of January 1 but only at \$1675.00 per month. The landlord testified that the home has a unique layout which makes it inappropriate for a family with young children. As a result it is more difficult to rent.

The tenant agreed that it would be hard to rent because of its floor plan. The tenant also said they moved out because they could not afford the place any longer and were unable to pay an additional three months of rent.

The tenants acknowledge they did not provide the landlord with their forwarding address at any time or in any manner. The landlords hired a skip tracer to locate the tenants. They were charged \$157.50 for this service.

Finally, during the tenancy the tenants bought a scooter from the landlords at a cost of \$525.00. The agreement was that this amount was to be paid over time with the rent. The landlord testified that no payment was ever received. The tenant agreed to this claim.

Analysis

The tenants acknowledged responsibility for the following claims:

Arrears of rent for July, August and September	\$1210.00
Scooter	\$ 525.00
Cleaning and Repairs	\$1603.50

The tenants did not give the landlords their forwarding address at any time before or after they moved. In order to pursue a claim over and above the security deposit and pet damage deposit the landlords' needed the tenants' new address so they could serve the application for dispute resolution. I find that the tenants are responsible for the costs incurred by the landlords to locate them, \$157.50.

With respect to the landlords' claim for loss of rental income, *Policy Guideline 30: Fixed Term Tenancies* explains that a fixed term tenancy is a tenancy where the landlord and tenant have agreed that the tenancy agreement will begin on a specified date and continue until a predetermined date. During the fixed term neither the landlord nor the tenant may end the tenancy except for cause or by agreement of both parties. For a tenant, this means that a tenant may not use the one month notice provisions of the legislation to end the tenancy prior to the end of the fixed term.

Also as explained in *Policy Guideline 3: Claims for Rent and Damages for Loss of Rent*, a tenant is responsible for the rent until the end of the fixed term or until a new tenant is found for the rental unit, whichever first occurs. The landlord has a legal responsibility to take all reasonable measures to mitigate the loss, usually by advertising as quickly and widely as possible and by asking for a reasonable rent.

The guideline also states that if a landlord is only able to re-rent the unit at a lower monthly rate the landlord is able to recover the difference in rent for the remainder of the term from the old tenant.

Based on the evidence provided by both parties, including the tenants' acknowledgement that this is a more challenging unit to rent, I find that the landlords did make all reasonable efforts to re-rent this unit as soon as possible. Accordingly, I find the tenants responsible for the landlords' loss of rent income for October, November

and December in the amount of \$5340.00 (\$1780.00 X 3) and January in the amount of \$105.00 for a total of \$5535.00.

Finally, as the landlords were successful on their application they are entitled to reimbursement from the tenants of the \$100.00 fee they paid to file it.

Conclusion

I find that the landlords have established a total monetary claim of \$9041.00, as detailed above. I order, pursuant to section 72, that the landlords retain the security deposit of \$890.00 and the pet damage deposit of \$200.00, in partial satisfaction of the claim and I grant the landlords an order under section 67 for the balance due of \$7951.00. If necessary, this order may be filed in Small Claims Court and enforced 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: June 06, 2013

Residential Tenancy Branch

