



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNR MND MNSD FF

Introduction:

This hearing dealt with an application by the landlord pursuant to the Residential Tenancy Act for orders as follows:

- a) A monetary order pursuant to Sections 46 and 67;
- b) An Order to retain the security deposit pursuant to Section 38; and
- c) An order to recover the filing fee pursuant to Section 72.

SERVICE:

The tenant did not attend. The landlord provided sworn evidence that he served the Application for Dispute Resolution by registered mail. It was verified online that the tenants refused to accept the registered mail so it was returned to the landlord. I find that the tenant is deemed to be served with the documents according to sections 88 and 89 of the Act.

Issue(s) to be Decided:

Has the landlord proved on the balance of probabilities that there is unpaid rent and damages, that damages were caused by the tenant, that they are beyond reasonable wear and tear and the amounts owed? Is the landlord entitled to recover the filing fee?

Background and Evidence:

The tenants did not attend but are deemed to be served with the Application/Notice of Hearing. The landlord was given opportunity to be heard, to present evidence and to make submissions. The landlord said the tenancy commenced in January 2012, a security deposit of \$1100 was paid and rent is currently \$2200 a month. The male tenant signed another fixed term lease for 6 months expiring on August 31, 2013; the female tenant continued to live in the premises as a tenant but refused to sign the lease. The landlord said that he told the tenants that he would not be renewing the lease on June 15, 2013 and on July 5, 2013; he got a text message from the tenants that they had left a week earlier. They stopped payment on their rent cheques for July and

August 2013. The landlord claims \$4400 in rental loss for July and August 2013 for breach of the fixed term lease. They left the home in a very dirty condition so it took some time to clean it up and dump the garbage. He has advertised but has not been able to re-rent the home.

In addition to the rental loss the landlord claims \$450 for a used refrigerator and stove. He said the tenants wanted nicer appliances for the basement unit and he gave consent for them to replace his appliances, provided they left the replacements. They removed his appliances and did not leave the replacements and even left a hole in the ceiling where they removed the fan. He said he bought replacements on the internet for \$450 but did not get a receipt.

The landlord claims also \$600 for garbage cleanup. He said one cleaner charged \$15 hour for 15 hours (\$225) and he and friends spent an additional 25 hours removing garbage and dumping. He provided no receipts but enclosed many photographs showing the home in a dirty condition. He limited his overall claim to \$5000.

On the basis of the solemnly sworn evidence presented at the hearing, a decision has been reached.

Analysis:

Monetary Order

I find that the male tenant signed a fixed term lease and the female tenant shared the tenancy with its privileges, rights and obligations during the whole of the term. While she refused to sign for the fixed term, I find she had the obligation to provide at least one month's written notice to the landlord pursuant to section 45. According to that section, a written notice given on July 5, 2013 would not be effective until August 31, 2013 so I find her equally responsible for the debt. I find the tenants caused the landlord rental loss by leaving before the end of the fixed term, not giving at least one month's written notice to end their tenancy and stopping payment on their post dated cheques for July and August. Although the landlord has tried to mitigate the damages, he was unable to rent the home for July or August partly because it required so much cleaning. I find there is rental loss in the amount of \$4400.

I find the landlord's evidence credible that the tenants removed his original appliances from the basement and did not leave the replacements as promised. I find he is entitled to recover \$450 which was his cost to buy some used replacements for the refrigerator and stove. I find his evidence credible as he supported it with photographs although he did not provide a receipt.

I find the landlord's evidence credible that the home was left in a very dirty condition. I found his testimony was presented in a straightforward manner and was supported by photographs illustrating the various points. I find it credible that he paid \$225 for 15 hours of work to a cleaner and then spent additional time cleaning it himself with friends. Awarding cleaning costs in excess of \$150 would mean his claim exceeds the \$5,000 stated on the application so I decline to award any extra costs for cleaning as the respondents have had no notice of additional costs.

Conclusion:

I find the landlord is entitled to a monetary order as calculated below. I find the landlord is entitled to retain the security deposit to offset the amount owing and to recover filing fees paid for this application.

Calculation of Monetary Award:

Rental loss July and August 2013	4400.00
Cost of replacing refrigerator and stove	450.00
Cleaning cost restricted due to amount of claim	150.00
Filing fee	50.00
Less security deposit (no interest 2012-13)	-1100.00
Total monetary order to landlord	3950.00

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: August 29, 2013

Residential Tenancy Branch

