



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 was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants' security deposit; and to recover the filing fee from the tenants for the cost of this application.

Service of the hearing documents, by the landlords to the tenants, was done in accordance with section 89 of the *Act*; served by registered mail on May 21, 2013. Canada Post tracking numbers were provided by the landlord in documentary evidence. The tenants were deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

One of the landlords appeared, gave sworn testimony, was provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenants, 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

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords permitted to keep the security deposit?

Background and Evidence

The landlord testifies that they rented this unit on a fixed term basis and entered into a sublease agreement with the tenants which started on December 01, 2012 for the remaining five months of the lease with their landlord for this property. Rent for this unit was \$1,500.00 per month due on the first of each month. The tenants paid a security deposit of \$750.00 on December 01, 2012.

The landlords testify that the tenants failed to pay rent for April of \$1,500.00. The landlords seek to recover this from the tenants. The landlord testifies that the tenants entered into e-mail correspondence with the landlords and needed more time to pay April's rent as they were hoping to continue as tenants in this unit after the sublease had ended and become tenants of the other landlord. However, as the other landlord requested that the tenants move out at the end of the lease, the tenants needed the rent money to pay a new security deposit.

The landlord attending the hearing withdraws their claim to keep the security deposit for damages and cleaning and seek to apply the security deposit to the unpaid rent instead.

Analysis

The tenants did not appear at the hearing to dispute the landlords claims, despite having been given a Notice of the hearing; therefore, in the absence of any evidence from the tenants, I have carefully considered the landlords documentary evidence and sworn testimony before me.

I have carefully considered all the evidence before me, including the sworn testimony of both parties and witnesses

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.

I am satisfied with the landlord's undisputed testimony that the tenants failed to pay rent for April, 2013 of **\$1,500.00**. The landlord is therefore entitled to a monetary award to recover the rent. The landlord is entitled therefore to keep the security deposit of **\$750.00** pursuant to s. 38(4) (b) of the *Act*. The security deposit will be offset against the unpaid rent.

The landlords are entitled to recover the **\$50.00** filing fee from the tenants pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlord's amended monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$800.00**. The order must be served on the respondents and is enforceable through the Provincial Court 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: August 21, 2013

Residential Tenancy Branch

