



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 dealt with the landlord's Application for Dispute Resolution a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent.

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on June 18, 2013 in accordance with Section 89. As per Section 90, the documents are deemed received by each tenant on the 5th day after it was mailed.

Based on the testimony of the landlord, I find that the tenants have been sufficiently served with the documents pursuant Section 71 to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for unpaid rent; for late fees; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlord submitted a portion of a tenancy agreement for a month to month tenancy beginning on July 29, 2012 for a monthly rent of \$965.00 due on the 1st day of each month with a security deposit of \$482.50 paid. The landlord testified clause 10 of the

tenancy agreement required the payment of \$25.00 as a fee for the late payment of rent.

The landlord submitted into evidence a copy of a 1 Month Notice to End Tenancy for Cause issued on May 27, 2013 with an effective vacancy date of June 30, 2013. The tenants vacated the rental unit on or before June 9, 2013.

The landlord also submitted two handwritten notes from one of the tenants, as follows:

- A copy a note stating: "We decline to participate in a walk-through due to how we have been treated prior."; and
- A copy of a note signed by the same tenant and dated June 9, 2013 stating amount owing in rent may be deducted from security deposit.

The landlord testified that she returned to the tenants \$117.97 from the security deposit and kept \$289.53 for rent until June 9, 2013; \$25.00 for a late payment fee; and \$50.00 for her fees paid for this Application.

Analysis

Section 26 stipulates that a tenant must pay rent when it is due under the tenancy agreement whether or not the landlord complies with the *Act*, regulation or tenancy agreement, unless the tenant has a right under the *Act* to deduct all or a portion of the rent.

As such, despite receiving a notice to end tenancy from the landlord I find the tenants were required to pay the rent in full in the amount of \$965.00 when it was due on June 1, 2013. As the tenants failed to do so the landlord has suffered a loss in this amount.

Section 35 of the *Act* requires a landlord and tenant to inspect the rental unit on or before the day a new tenant begins to occupy the unit. The Section goes to state that it is the landlord's obligation to set the time of the inspection and complete a Condition Inspection Report and provide a copy of that Report to the tenants.

Section 36 stipulates that the tenant extinguishes their right to return of the security deposit if the tenants have not participated in the move out condition inspection. As the tenants clearly refused to attend any move out condition inspection I find they extinguished their right to the return of any portion of the security deposit. I accept the landlord, did however, return a portion of the deposit.

Conclusion

I find the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$1,040.00** comprised of \$965.00 rent owed; \$25.00 late payment fees and the \$50.00 fee paid by the landlord for this application.

I order the landlord may deduct the balance of the security deposit held in the amount of \$364.53 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$675.47**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlord may file the order in the Provincial Court (Small Claims) and be 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: September 23, 2013

Residential Tenancy Branch

