



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes

For the landlords: OPR MNR MNDC FF

For the tenants: CNC CNR FF

Introduction

This hearing was convened as a result of the cross applications of the parties for dispute resolution under the *Residential Tenancy Act* (the “Act”).

The landlords applied for an order of possession for unpaid rent or utilities, for a monetary order for unpaid rent or utilities, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The tenants applied to cancel a Notice to End Tenancy for Cause and for Unpaid Rent or Utilities, and to recover the filing fee.

The landlords and the tenants attended the hearing. The hearing process was explained to the parties and an opportunity was given to ask questions about the hearing process. Thereafter the parties gave affirmed testimony, were provided the opportunity to present their relevant evidence orally and in documentary form prior to the hearing, and make submissions to me.

The tenants confirmed that they did not submit evidence in support of their application or in response to the landlords’ application. The tenants did not dispute that they received and reviewed the landlords’ evidence. I find the tenants were served in accordance with the *Act* with the landlords’ evidence.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary and Procedural Matters

The tenants stated at the outset of the hearing that they vacated the rental unit on October 8, 2013, which the landlords confirmed. As a result, the tenants requested to withdraw their application in full, which was permitted as such a request does not prejudice the landlords.

The landlords withdrew their request for an order of possession as the tenants have vacated the rental unit. The landlords were permitted to withdraw that portion of their request as such a request does not prejudice the tenants. Given the above, the hearing proceeded with consideration of the landlords' claim for a monetary order for unpaid rent for September 2013 and loss of rent for October 2013.

Issue to be Decided

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

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on July 1, 2013 and was to revert to a month to month tenancy after July 1, 2014. Monthly rent in the amount of \$1,300.00 was due on the first day of each month. The tenants paid a security deposit of \$600.00 at the start of the tenancy, which the landlords continue to hold.

The parties agree that the tenants vacated the rental unit on October 8, 2013, after a mutual agreement was reached resulting in an order of possession being granted at an earlier hearing held on September 11, 2013.

The landlords have claimed \$2,600.00 comprised of the following:

Unpaid September 2013 rent	\$1,300.00
Loss of October 2013 rent	\$1,300.00
TOTAL	\$2,600.00

The landlords stated that they did not receive September 2013 rent of \$1,300.00 from the tenants. The tenants testified that they paid \$1,300.00 cash to the landlords on

September 1, 2013. The landlords denied having received cash from the tenants and are also seeking \$1,300.00 for loss of October 2013 rent. The tenants confirmed that they did not pay rent for the month of October 2013.

The tenants stated that they withdrew \$2,000.00 or more of cash on August 30, 2013 from a bank teller and that with that money, they paid their rent in cash to the landlords of \$1,300.00 on September 1, 2013, plus they paid off other bills with the cash remaining.

The landlords stated that they provided receipts for August 2013 rent which the tenants disputed. The landlords submitted a copy of a receipt dated August 1, 2013, however, the tenants stated that the landlords did not provide a receipt to them. The landlords referred to a receipt prepared for the tenants dated September 1, 2013 but not provided as the tenants due to the tenants failing to pay rent for September 2013.

The tenants were ordered to fax in their bank statements for the months of August 2013 and September 2013 by October 16, 2013 at 5:00 p.m. The tenants complied with my order by faxing in their bank statements for the months of August 2013 and September 2013 on October 16, 2013 before 5:00 p.m.

The landlords were asked about the amount of their bank deposit for the months of August 2013 and September 2013, and if their bank deposit would have been less for September 2013 by \$1,300.00 due to the tenants allegedly failing to pay rent in cash for September 2013, and having paid rent for August 2013. Landlord CC stated that she was unable to confirm the exact amount of their bank deposits due to the landlords receiving rent from other tenants for other rental units, plus they combine those amounts received with money received for boarding horses. Landlord CC further stated that for September 2013, they may have had less horses boarded at the time which could have accounted for less money deposited for the month of September 2013. As a result, the landlords could not provide a specific amount deposited for August 2013 or September 2013 during the hearing.

The landlords submitted a binder of evidence, which the tenants stated was evidence related to a previous hearing held on September 11, 2013, and to which the landlords did not disagree. The landlords also submitted a 10 Day Notice for Unpaid Rent or Utilities dated September 2, 2013, the tenancy agreement, and a letter from witness HL, who writes that she witnessed landlord JC serve tenant AB a 10 Day Notice on September 2, 2013.

The tenants stated that they should not be required to pay all of October 2013 rent as they vacated the rental unit on October 8, 2013 pursuant to the order of possession granted via a mutually settled agreement. The landlords were asked what attempts they made to re-rent the rental unit after October 8, 2013 when the tenants vacated the rental unit. The landlords confirmed that they did not place any advertisements or make any other efforts to re-rent the rental unit for the month of October 2013.

Analysis

Based on the testimony and documentary evidence before me, and on the balance of probabilities, I find the following.

Test for damages or loss

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in sections 7 and 67 of the *Act*. Accordingly, an applicant must prove the following:

1. That the other party violated the *Act*, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

In this instance, the burden of proof is on the landlords to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the tenants. Once that has been established, the landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the landlords did everything possible to minimize the damage or losses that were incurred.

The landlords have applied for \$1,300.00 for unpaid rent for September 2013, and loss of rent of \$1,300.00 for October 2013. The landlords did not provide any ledgers for the tenants to support that they failed to pay September 2013 rent. The landlords submitted one receipt for August 2013; however, the tenants disputed that receipt by stating that they did not receive a copy of that receipt from the landlords. Nevertheless, the parties agree August 2013 rent was paid.

The landlords submitted a receipt for September 1, 2013 that they state was not provided to the tenants as they did not receive rent for the month of September 2013. The tenants stated that they withdrew \$2,000.00 or more in cash from their bank account on August 30, 2013 to pay rent for September 1, 2013 and used their remaining cash to pay other bills. The tenants were ordered to fax in their bank statements for August 2013 and September 2013, and the tenants complied with my order by faxing their bank statements for August 2013, September 2013 and the last portion of July 2013. According to the tenants' bank statements, the tenants withdrew \$2,600.00 in cash on August 30, 2013, which is consistent with the tenants' testimony, and matches the exact date as stated by the tenants as to the date they withdrew the cash to pay their rent for September 2013.

The landlords were unable to provide me their specific bank deposit amounts for the months of August 2013 and September 2013, due to the landlords combining the rent received from other tenants, plus the business income related to horse boarding, which is confusing and which I find results in the landlords failing to provide sufficient evidence to prove their loss of September 2013 rent.

Given the above, I prefer the evidence of the tenants that rent was paid on September 1, 2013 in cash, and I dismiss the landlords' claim for September 2013 rent for \$1,300.00 due to insufficient evidence, without leave to reapply.

There is no dispute that rent for October 2013 was not paid by the tenants. The tenants' position is that they should not be required to pay all of October 2013 rent as they vacated the rental unit on October 8, 2013. The landlords confirmed that after the tenants vacated the rental unit on October 8, 2013, they did not make any attempts to re-rent the rental unit, such as placing an advertisement. Section 7 of the *Act* states:

Liability for not complying with this Act or a tenancy agreement

- 7** (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

[emphasis added]

Given the above, I find the landlords failed to do whatever is reasonable to minimize their loss of October 2013. At the very least, the landlords should have placed an ad to attempt to find a new tenant after the tenants vacated on October 8, 2013. As a result of the above, **I find** the tenants do owe rent for the first eight days of October that they were residing in the rental unit. As October 2013 has 31 days, the daily rent amount for October 2013 would be \$41.94 per day, which is \$1,300.00 divided by 31 days. Eight days multiplied by \$41.94 per day results in a total of \$335.52. As a result, **I find** the landlords are owed **\$335.52** for loss of rent for the first eight days of October 2013 when the tenants were occupying the rental unit. **I dismiss** the remainder of the landlords claim for loss of October 2013 rent due to the landlords failure to comply with section 7 of the *Act* by failing to attempt to do what was reasonable to minimize the damage or loss under the *Act*.

The landlords continue to hold the tenants security deposit of \$600.00 which has accrued \$0.00 in interest since the start of the tenancy.

As the landlords were successful with only a portion of their claim, **I grant** the landlord's the recovery of half of their filing fee in the amount of **\$25.00**. **I find** that the landlords have established a total monetary claim of **\$360.52** which is comprised of loss of 8 days rent for October 2013 in the amount of \$335.52, plus \$25.00 of their filing fee. **I authorize** the landlords to retain \$360.52 of the tenant's security deposit of \$600.00 in full satisfaction of their monetary claim.

I ORDER the landlords to immediately return the tenants security deposit balance of **\$239.48**.

I grant the tenants a monetary order pursuant to section 67 of the *Act*, in the amount of **\$239.48**. Should the landlords fail to comply with my order to immediately return the \$239.48 portion of the tenants' remaining security deposit balance, the tenants must served the monetary order on the landlords and the monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlords have established a total monetary claim of \$360.52. I authorize the landlords to retain \$360.52 from the tenants' \$600.00 security deposit and to immediately return the remaining security deposit balance to the tenants in the amount of \$239.48. The tenants have been granted a monetary order in the amount of \$239.48 should the landlords fail to comply with my order.

This decision is final and binding on the parties, unless otherwise provided under the Act, and 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: October 29, 2013

Residential Tenancy Branch

