



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent or utilities; 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.

One of the tenants and the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent and utilities?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The parties agree that this tenancy started on July 23, 2013 for a fixed term tenancy that was due to expire on January 31, 2014. Rent for this unit was \$1,350.00 however

this was reduced to \$1,250.00. The tenants paid a security deposit of \$750.00 on or about July 25, 2013.

The landlord testifies that the tenants abandoned the rental unit while the landlords were away from home sometime around November 19th or 20th. The landlords arrived home and found the unit nearly empty of the tenants' belongings and they were informed by the neighbour who keeps an eye on the property for the landlord that the tenants had not been seen for a few days.

The landlord testifies that prior to this the tenants had said that they did not like the place and the landlords informed them that if they gave the landlords a month's written notice so the landlords could try to re-rent the unit then the tenants would not be held to the lease if the unit could be re-rented before their lease expired. The tenants did not provide written notice.

The landlords testify that they started to advertise the unit in early December by placing advertisements on facebook, on internet rental sites and by putting up posters. The landlords did receive some calls from prospective tenants but the unit was not re-rented until March 01, 2014. The landlords seek to recover a loss of rent for December, 2013 and January, 2014 to an amount of \$2,500.00.

The landlord testifies that the utilities were in the tenants name and there are some outstanding amounts owed. The landlord agrees that they have not provided copies of the utility bills however testify that the tenants owe \$77.00 a month for Gas and \$77.00 a month for Hydro. The landlord testifies that the tenants had paid utilities for August, September and October, 2013.

The landlords seek an Order permitting them to keep the security deposit to offset against the unpaid rent.

The landlords started to discuss some damages in the unit and property however the landlord has not applied for damage to the unit, site or property and therefore In the absence of a formal and proper application for that issue, I declined to hear or determine that issue, as to do so, in my view, would not be in keeping with the principles of natural justice as to the requisite process and notice regarding claims in this process. The landlords are at liberty to file a claim for damage to the unit, site or property.

The tenant attending disputes the landlords claim for unpaid rent. The tenant testifies that the landlords had expected the tenants to fix leaking pipes and if they did not like it they could move out. The tenant testifies that the landlords verbally evicted the tenants and then they changed their mind and said the tenants could stay until the end of January, 2014. The tenant testifies that by this time they had already found a new rental unit and so moved from this unit on November 29th or 30th, 2013. The tenant testifies that they did not provide written notice to the landlords as they were tired of the landlords asking them to make renovations to the landlords' house. The landlords had also said the tenants could pay half a month's rent for December and so the tenants thought the security deposit would cover this amount.

The tenant disputes the landlords claim for unpaid utilities. The tenant testifies that all utilities were in the tenants name and these have all been paid to the end of their tenancy.

The landlord disputes the tenants claim that the landlords asked the tenants to renovate their property. The landlord testifies that a pipe was leaking and the landlords made four attempts to go into the unit to repair this pipe but were refused access for various reasons by the tenant. Eventually the landlords told the tenants to repair the pipe if they would not let the landlords in to do it. The landlord disputes that the evicted the tenants but testify that the tenants were told the landlords could evict them.

The landlord questions the tenant and asks why the tenant signed the tenancy agreement if they did not agree to the terms contained in it. The tenant responds that they did agree to the terms.

The tenant asks the landlord about their advertisement and testifies that the tenant did not see an advertisement for the unit until January, 2014. The landlord responds that the first advertisements were placed on December 04, 2013.

Analysis

I have carefully considered all the relevant evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for loss of rent for December and January of \$2,500.00; I refer the parties to the *Residential Tenancy Act* (Act) s. 45(2) which states:

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In consideration of s. 45(2) of the Act I find the tenants did end the tenancy before the end of the fixed term agreement. I further find that the landlords had not given the tenants an eviction notice and may therefore consider that the tenants ended the tenancy in November, 2013.

The Residential Tenancy Policy Guidelines #3 states in part that when the tenants have left a tenancy the landlord is entitled to damages to recover any loss of rent. Damages

awarded are an amount sufficient to put the landlord in the same position as if the tenants had not breached the agreement. As a general rule this includes compensating the landlords for any loss of rent up to the earliest time that the tenants could legally have ended the tenancy. As the tenancy agreement shows that the lease ended on January 31, 2014, the tenants could not legally have ended the tenancy before this date. I find the landlords' evidence to be credible concerning the placement of advertisements to re-rent the unit in December, 2013. Consequently, it is my decision that the landlords are entitled to recover a loss of rent for December and January, 2014 to an amount of **\$2,500.00** pursuant to s. 67 of the *Act*.

With regard to the landlords claim for unpaid utilities; the landlords have not provided copies of any outstanding utility bills to show that there is an outstanding amount owed by the tenants during their tenancy. Consequently, due to insufficient evidence I must dismiss this portion of the landlords claim.

With regard to the landlords claim to keep the security deposit, I ORDER the landlords to retain the security deposit of **\$750.00** pursuant to s. 38(4)(b) of the *Act*. This amount will be offset against the landlords claim for unpaid rent.

I further find the landlords are entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*. A Monetary Order has been issued to the landlords for the following amount:

Loss of rent for two months	\$2,500.00
Filing fee	\$50.00
Less security deposit	(-\$750.00)
Total amount due to the landlords	\$1,800.00

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,800.00**. The Order

must be served on the respondents. Should the respondents fail to comply with the Order, the Order may be enforced 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: March 26, 2014

Residential Tenancy Branch

