



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNSD MNDC FF

Introduction

This hearing dealt with an Application for Dispute Resolution under the *Residential Tenancy Act* (the “Act”) by the landlord for a monetary order for unpaid rent or utilities, for authority to retain the security deposit, for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee.

The landlord attended at the teleconference hearing and gave affirmed testimony. During the hearing the landlord was given the opportunity to provide her evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the matters before me.

As the tenants did not attend the hearing, service of the Notice of a Dispute Resolution Hearing (the “Notice of Hearing”) was considered. The landlord testified that the tenants were served the Notice of Hearing and evidence in the following methods. The landlord stated that tenant “DH” was served personally at the rental unit at approximately 5:00 p.m. on November 26, 2013, while tenant “SH” was served by registered mail on November 27, 2013 to the forwarding address provided by the tenants as their written forwarding address dated November 15, 2013. A copy of the tenants’ written forwarding address was submitted in evidence. The landlord provided a registered mail tracking number in evidence. The landlord stated that the registered mail package was returned to the landlord as “unclaimed”, a copy of which was submitted in evidence. Based on the undisputed testimony of the landlord and the documentary evidence, I accept that tenant “DH” was served on November 26, 2013 at the rental unit. Documents served by registered mail are deemed served five days after they are mailed in accordance with section 90 of the *Act*. I find that tenant “SH” was deemed served as of December 2, 2013.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

The landlord submitted a copy of the fixed term tenancy agreement in evidence. The fixed term tenancy agreement indicates that the tenancy began on November 15, 2013, and was scheduled to revert to a month to month tenancy after July 31, 2014, or another fixed length of time after July 31, 2014, unless the tenants give written notice to end the tenancy at least one clear month before the end of the term. Monthly rent was \$950.00 per month due on the first day of each month. The tenants paid a security deposit of \$475.00 at the start of the tenancy which the landlord continues to hold. The tenancy agreement was signed by the parties on November 8, 2013.

The landlord testified that the tenants advised her on November 15, 2013, that they "changed their minds" and did not move into the rental unit as a result. The landlord stated that she was able to secure new renters effective December 1, 2013, and as a result, is only claiming the loss of half of one month's rent, for a total of \$475.00. The landlord is also seeking the recovery of the filing fee of \$50.00. The landlord testified that the tenants failed to pay any rent for the month of November 2013.

Analysis

Based on the documentary evidence and the undisputed testimony provided during the hearing, 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.

Claim for unpaid rent – The landlord testified that the tenants signed a fixed term tenancy agreement on November 8, 2013, which was submitted in evidence. On November 15, 2013, the landlord stated that the tenants advised her that they would not be moving in as they “changed their minds”. The landlord was able to find new renters effective December 1, 2013. Section 45 of the *Act* states regarding a fixed term tenancy:

45 (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.**

(4) A notice to end a tenancy given under this section must comply with section 52 *[form and content of notice to end tenancy]*.

[my emphasis added]

Given the above, **I find** the tenants breached section 45 of the *Act* as they were not authorized to end their fixed term tenancy earlier than July 31, 2014, having signed the fixed term tenancy agreement on November 8, 2013 and the tenancy starting on November 15, 2013. Section 7 of the *Act* states:

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.**

[my emphasis added]

Based on the above, **I find** the landlord complied with section 7 of the *Act* by securing new renters effective December 1, 2013, which limited her loss to \$475.00 comprised of unpaid rent from November 15, 2013 to November 30, 2013.

Pursuant to section 26 of the *Act* a tenant must pay rent when it is due in accordance with the tenancy agreement. Based on the above, **I find** that the tenants failed to comply with a standard term of the tenancy agreement which stipulates that rent is due monthly on the first of each month, and that rent for remainder of November 2013 was due at the start of the tenancy agreement, November 15, 2013, which was half of month's rent as claimed by the landlord.

Given the above, **I find** the landlord has met the burden of proof and has established a monetary claim of **\$475.00** comprised of unpaid rent for November 15, 2013 to November 30, 2013, due to the tenants breaching section 45 of the *Act*. The landlord was able to minimize her loss by securing new renters effective December 1, 2013.

As the landlord has succeeded with their application, **I grant** the landlord the recovery of the **\$50.00** filing fee.

The tenants' security deposit of \$475.00 has accrued \$0.00 interest since the start of the tenancy.

Monetary Order – I find that the landlord is entitled to a monetary claim and that this claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the tenants' security deposit as follows:

| | |
|---|---------------------|
| Unpaid portion of November 2013 rent (November 15, 2013 to November 30, 2013) | \$475.00 |
| Filing fee | \$50.00 |
| Subtotal | \$525.00 |
| <i>(Less Tenants' Security Deposit with \$0.00 interest)</i> | <i>-(\$475.00)</i> |
| TOTAL AMOUNT OWING BY TENANTS TO LANDLORD | \$50.00 |

I find that the landlord has established a total monetary claim of **\$525.00** as described above. **I ORDER** the landlord to retain the tenants' full security deposit of \$475.00 in partial satisfaction of the landlord's monetary claim, and I grant the landlord a monetary order under section 67 for the balance due of **\$50.00**. This order must be served on the

tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

I find that the landlord has established a total monetary claim of \$525.00. The landlord has been ordered to retain the tenants' full security deposit of \$475.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order under section 67 for the balance due of \$50.00. This order must be served on the tenant and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: March 25, 2014

Residential Tenancy Branch

