



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the *Act*) for:

- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenants pursuant to section 72.

The tenants did not attend this hearing, although I waited until 11:15 a.m. in order to enable them to connect with this teleconference hearing scheduled for 11:00 a.m. The landlord's agent (the landlord) attended the hearing and was given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses. She testified that on October 27, 2013, the tenants gave their written notice to end this tenancy by October 31, 2013. She said that they placed this notice under the door of the manager of this rental property. She testified that the tenants vacated the premises on October 31, 2013, surrendering their keys to the landlord at that time.

The landlord testified that she sent both tenants copies of the landlord's dispute resolution hearing package on November 14, 2013 by registered mail. She entered into written evidence copies of the Canada Post Tracking Number to confirm these mailings. She gave sworn testimony that the tenants picked up both registered mail hearing packages on November 19, 2013. The landlord also testified that she sent copies of the remainder of the landlord's written evidence to the tenants by registered mail on February 12, 2014. She said that the written evidence package to the male tenant was successfully delivered on February 19, 2014. In accordance with sections 89(1) and 90 of the *Act*, I am satisfied that the tenants have been deemed served with the above documents on the fifth day after their registered mailing.

Issues(s) to be Decided

Is the landlord entitled to a monetary award for unpaid utilities and loss of rent arising out of this tenancy? Is the landlord entitled to retain the tenants' security deposit in partial satisfaction of the monetary award requested? Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This tenancy began as a six-month fixed term tenancy on February 1, 2013. When the initial term expired, the tenancy continued as a periodic tenancy. Monthly rent was set at \$700.00, payable in advance on the first of each month. The landlord continues to hold the tenants' \$350.00 security deposit paid on January 4, 2013.

The landlord's original application was for a monetary award of \$700.00, to recover the landlord's loss of rent for the month of November 2013. The landlord amended the original application by adding \$208.09 to the original request as a result of an unpaid utility bill in that amount that remained after this tenancy expired. The landlord gave evidence that the landlord paid this bill on December 24, 2013.

The landlord testified that efforts were made to re-rent these premises for November 2013, by placing advertisements outside this building and by placing advertisements on two popular rental websites. The landlord testified that the landlord was able to locate new tenants as of December 1, 2013. Their rent is the same monthly rent as the landlord was receiving from the Respondents in this application.

Analysis

Section 7(1) of the *Act* establishes that a tenant who does not comply with the *Act*, the regulations or the tenancy agreement must compensate the landlord for damage or loss that results from that failure to comply. Section 45(1) of the *Act* requires a tenant to end a month-to-month (periodic) tenancy by giving the landlord notice to end the tenancy the day before the day in the month when rent is due. In this case, in order to avoid any responsibility for rent for November 2013, the tenants would have needed to provide their written notice to end this tenancy before October 1, 2013. As there is undisputed sworn testimony and written evidence that this did not occur, I find that the tenants did not comply with the provisions of section 45(1) of the *Act* and were responsible for paying rent for November 2013. As such, the landlord is entitled to compensation for losses incurred as a result of the tenants' failure to comply with the terms of their tenancy agreement and the *Act*.

There is undisputed evidence that the tenants did not pay any rent for November 2013. However, section 7(2) of the *Act* places a responsibility on a landlord claiming

compensation for loss resulting from a tenant's non-compliance with the *Act* to do whatever is reasonable to minimize that loss. Based on the evidence presented, I accept that the landlord did attempt to re-rent the premises for November 2013. As such, I am satisfied that the landlord has discharged the duty under section 7(2) of the *Act* to minimize losses. I find that the landlord is entitled to a monetary award of \$700.00 for the landlord's loss of rent for November 2013.

I also find in accordance with section 67 of the *Act* that the landlord has demonstrated losses incurred as a result of the tenants' failure to pay their utility bill for this rental unit. I issue a monetary award in the landlord's favour in the amount of \$208.09, to reimburse the landlord for the undisputed losses arising out of the tenants' unpaid utility bills.

I allow the landlord to retain the tenant's security deposit plus applicable interest in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. I also allow the landlord to recover the filing fee from the tenants.

Conclusion

I issue a monetary Order in the landlord's favour under the following terms, which allows the landlord to recover unpaid utilities, losses in rent and the filing fee, and to retain the tenants' security deposit:

Item	Amount
Loss of Rent November 2013	\$700.00
Unpaid Utilities	208.09
Less Security Deposit	-350.00
Recovery of Filing Fee for this Application	50.00
Total Monetary Order	\$608.09

The landlord is provided with these Orders in the above terms and the tenant(s) must be served with this Order as soon as possible. Should the tenant(s) fail to comply with these Orders, these Orders may be filed in the Small Claims Division of the Provincial Court and enforced as Orders 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 03, 2014

Residential Tenancy Branch

