



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 was scheduled in response to the landlord's application. While the tenants appeared and gave affirmed testimony, the landlord did not. The tenants testified that the landlord served them by way of registered mail with her application for dispute resolution and the notice of hearing (the "hearing package") at their current address. The tenants further testified that their current address is the forwarding address they provided to the landlord's agent when their tenancy ended. However, that particular address is not set out in the landlord's original application or either of her 2 subsequently amended applications.

In the landlord's original application filed on December 10, 2013, she sought an order of possession / a monetary order as compensation for unpaid rent / and recovery of the filing fee.

On December 11, 2013 the landlord filed an amended application in which she sought only a monetary order as compensation for unpaid rent / and recovery of the filing fee.

Thereafter, on December 19, 2013 the landlord filed another amended application in which she sought a monetary order as compensation for unpaid rent / retention of the security deposit / and recovery of the filing fee.

Issue(s) to be Decided

Whether the landlord is entitled to any of the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Prior to the tenancy which is the subject of this dispute, the parties entered into a separate tenancy agreement for a separate unit; that tenancy was for a 2 ½ month period from November 01, 2012 to January 15, 2013. Monthly rent was \$2,350.00 and a security deposit of \$1,175.00 was collected.

After the conclusion of the above tenancy, pursuant to another written tenancy agreement the parties entered into a 1 year fixed term tenancy for the tenancy which is the subject of this dispute. The term of tenancy was from January 15, 2013 to January 15, 2014. Monthly rent of \$2,950.00 was due and payable in advance on the first day of each month. The tenants testified that after payment of ½ month's rent in January 2013, full month rent cheques post-dated for the first day of each month were issued to the landlord. While the tenancy agreement reflects the requirement for a security deposit of \$1,475.00, the tenants' recollection is that the security deposit of \$1,175.00 from the former tenancy was simply carried over into this second tenancy, and no additional security deposit funds were collected.

By email dated October 31, 2013, the tenants inquired whether they might end the fixed term tenancy 1 month early on December 15, 2013. Thereafter, the tenants put a stop payment on their rent cheque for the full month of December 2013, and issued a cheque for \$1,475.00 as payment for the period from December 1 to 15, 2013. The tenants testified that they vacated the unit on December 13, 2013, and provided the landlord's agent with their forwarding address at that time. The tenants' understanding is that the landlord did not subsequently re-rent the unit but, rather, sold it.

Analysis

Section 45 of the Act speaks to **Tenant's notice**, in part as follows:

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.

Section 7 of the Act speaks to **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.

Based on the documentary evidence and the affirmed / undisputed testimony of the tenants, I find that the tenants did not end the fixed term tenancy in compliance with the statutory provisions set out above. Specifically, the tenants ended the tenancy prior to "the date specified in the tenancy agreement as the end of the tenancy."

However, in the absence of the landlord at the hearing scheduled in response to her application, and in the absence of any conclusive documentary evidence to the contrary, I am unable to find that the landlord undertook to mitigate the loss of rental income by, for example, advertising for new renters following her receipt of notice from the tenants. In the result, the landlord's application for retention of the security deposit and recovery of the filing fee is hereby dismissed, and the landlord is hereby ordered to repay the original security deposit to the tenants in the amount of \$1,175.00.

Conclusion

The landlord's application is hereby dismissed.

Pursuant to section 67 of the Act, I hereby issue a **monetary order** in favour of the tenants in the amount of **\$1,175.00**. Should it be necessary, this order may be served on the landlord, filed in the Small Claims Court and 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: April 07, 2014

Residential Tenancy Branch

