



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlord for a monetary order and an order permitting them to retain the security deposit. Both parties participated in the conference call hearing with the tenant S.H. representing both tenants.

Issue to be Decided

Are the landlords entitled to a monetary order as claimed?

Background and Evidence

The parties agreed that the tenancy began on July 15, 2013 and was set to run for a fixed term ending on March 31, 2014. They further agreed that rent was set at \$1,250.00 per month and that the tenants paid a \$625.00 security deposit and a \$625.00 pet damage deposit. They further agreed that the tenancy ended on December 15, 2013, one month after the tenants provided notice on November 15, 2013 that they were ending the tenancy. The parties also agreed that the tenants owe \$577.95 for unpaid utilities.

The landlords seek to recover \$625.00 in lost income for the month of December as well as \$50.00 per month in lost income for each of January, February and March. They testified that they were unable to find tenants until January 1, 2014 and that the new tenants pay just \$1,200.00 per month instead of the \$1,250.00 per month the landlords had anticipated receiving from the tenants. S.H. agreed that the landlords should be entitled to recover loss of income for December 16-31 but said that she was under the impression that the new tenants moved into the unit in late December. The landlords replied that the keys were given to the new tenants on December 28 but to their knowledge, they did not move in until December 31. S.H. argued that she should not be

held responsible for loss of income from January – March because it was possible that the landlords did not need to settle for less rent.

The landlords testified that because they don't live in the city in which the rental unit is located, they had to hire someone to re-rent the unit at a cost of \$600.00 which they seek to recover from the tenants. S.H. argued that she offered to advertise and show the suite but the landlords did not follow up on that offer.

The landlords also seek to recover the \$50.00 filing fee paid to bring their application.

Analysis

As the parties agreed that the tenants owe \$577.95 for unpaid utilities, I award the landlords that sum.

I am not persuaded that the new occupants moved into the rental unit early and as the tenants had already surrendered possession of the unit and as there is no indication that the landlord received any rent whatsoever for the latter half of December, I find that the tenants should be held responsible for rent for that period and I award the landlords \$625.00.

The landlords had an obligation under the Act to act reasonably to minimize their losses once they discovered that the tenants would not be fulfilling the terms of the lease agreement. I find that the landlords acted reasonably in advertising and showing the unit and that they were not required to take the extra step of having the tenants duplicate those efforts. Rather than suffer the loss of an entire month's rent in order to wait for prospective tenants to agree to a monthly rental rate of \$1,250.00, the landlords accepted a lower rent in order to minimize their losses and I find that their actions were reasonable in the circumstances. I find that the tenants are liable for the difference between the rent they were paying and the rent the new occupants are paying for the balance of the lease term. I award the landlords \$150.00 which represents a \$50.00 loss for each of the last 3 months of the fixed term.

I dismiss the landlords' claim for the cost of hiring an agent to re-rent the unit. The landlords chose to live in a different location from the rental unit and the cost of that choice may be built into the rent required for the unit at the outset of the tenancy but should not be visited on tenants after the tenancy has ended.

As the landlords have been substantially successful in their claim, I find they should recover the filing fee paid to bring their application and I award them \$50.00.

Conclusion

The landlords have been successful as follows:

Utilities	\$ 577.95
Loss of income for December 16 – 31	\$ 625.00
Rent differential for January – March	\$ 150.00
Filing fee	\$ 50.00
Total:	\$1,402.95

I order the landlords to retain the \$1,250.00 in security and pet deposits in partial satisfaction of the claim and I grant them a monetary order under section 67 for the balance of \$152.95. This order may be filed in the Small Claims Division of the Provincial 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 23, 2014

Residential Tenancy Branch

