



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by one of the landlords and both tenants.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled; to a monetary order for lost revenue; for unpaid utilities; for all or part of the security deposit and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 38, 45, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The landlords provided a copy of a tenancy agreement signed by the parties on December 22, 2013 for a 1 year fixed term tenancy beginning on January 1, 2014 for a monthly rent of \$1,090.00 due on the 1st of each month with a security deposit of \$545.00 paid. The agreement contained an addendum requiring the tenants to pay 40% of gas and hydro utilities.

The landlords submitted into evidence an email from the tenants dated January 20, 2014 that states the tenants have been disturbed by ongoing noises from the upper rental unit since they moved in. The email goes on to state that the tenants had found a new place to live and that they would be moving out of the rental unit by the upcoming weekend (January 25 and 26 2014). The landlord submits the tenants returned the keys to the rental unit on January 26, 2014.

The parties agree the tenants did not identify to the landlords any noise problems with the rental unit prior to the January 20, 2014 email. The parties also agree that once the landlords received the tenants' email the landlord offered to have the ceiling soundproofed and to provide the tenants with compensation equivalent to 1 month's rent for inconvenience during the soundproofing.

The tenants declined the offer and vacated the rental unit. The tenants submit that due to the female tenant's pregnancy they were not prepared to deal with the stress of having to move out and back in after completion. The male tenant submits that based on his work he felt that it would not be a simple task to soundproof the unit and felt it would never meet their needs.

The landlords submit that they began advertising the availability of the rental unit 2 days after receiving the tenants' email and that they reduced the amount of rent by \$15.00 to ensure filling the vacancy as soon as possible and to minimize any losses they might have incurred if they could not re-rent the unit.

The landlords submit they were able to re-rent the unit effective March 1, 2014. The landlords seek compensation for lost revenue for the month of February 2014 in the amount of \$1,090.00 and \$15.00 per month for the period March 2014 to December 2014.

The landlords also seek the tenants' portion of utilities that the tenants have failed to pay and have provided copies of both hydro and gas bills. The landlords have provided calculations as follows: Hydro - \$23.27; Gas - \$70.87. The tenants do not dispute the landlords' claim for utilities.

Analysis

To be successful in a claim for compensation for damage or loss the applicant has the burden to provide sufficient evidence to establish the following four points:

1. That a damage or loss exists;
2. That the damage or loss results from a violation of the *Act*, regulation or tenancy agreement;
3. The value of the damage or loss; **and**
4. Steps taken, if any, to mitigate the damage or loss.

Section 45(2) of the *Act* stipulates that a tenant may end a fixed term tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

Section 28 of the *Act* states a tenant is entitled to quiet enjoyment including, but not limited to, rights to reasonable privacy; freedom from unreasonable disturbance;

exclusive possession of the rental unit subject only to the landlord's right to enter the rental unit in accordance with Section 29; and use of common areas for reasonable and lawful purposes, free from significant interference.

Based on the testimony and evidence of both parties I find that the landlords failed to comply with Section 28 and as such were in breach of a material term of the tenancy agreement. However, I also find the landlords immediately offered to and took steps to begin addressing the identified issue and offered compensation to the tenants.

I note that Section 45(3) requires a tenant who wishes to end a tenancy because the landlord has breached a material term must give the landlord written notice of the breach and a reasonable time to correct the breach. The section goes on to say that only if the landlord then fails to correct the breach can the tenant end the tenancy.

In the case before me I find the landlords took immediate steps and were willing to correct the breach and compensate the tenants for the breach. However the tenants declined the offer and moved out of the rental unit within 6 days of giving their notice to the landlord. As such, I find the tenants failed to allow the landlords reasonable time to correct the breach and as a result could not rely on Section 45(3) to end the tenancy.

As I have found that the tenants could not rely on Section 45(3) of the *Act* to end the tenancy they were required to end the tenancy under Section 45(2). Therefore the earliest the tenants could end the tenancy was at the end of the fixed term or December 31, 2014.

As such, I find the tenants have violated the Section 45(2) of the *Act* and are responsible for the payment of the amount of rent noted in the tenancy agreement to December 31, 2014 subject only to the landlords' obligation to mitigate their losses.

I am satisfied the landlords took reasonable steps to mitigate their losses by advertising immediately upon determining the tenants were not willing to remain despite the landlords' offers and by reducing the rent to ensure a quick acceptance of a new tenant.

I find the landlords have established the value of this loss to be \$1090.00 rent for February 2014 and \$150.00 for the reduced rent the landlords will receive from the new tenancy, for a total of \$1,240.00.

Based on the testimony and evidence of the both parties regarding the utilities owed I find the landlord has established the value of these costs for the period of the occupancy of these tenants. I note also that the tenants do not dispute the amounts claimed for utilities.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$1384.14** comprised of \$1,240.00 lost revenue; \$23.27 hydro; \$70.87 gas; and the \$50.00 fee paid by the landlords for this application.

I order the landlords may deduct the security deposit and interest held in the amount of \$545.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$839.14**.

This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: May 23, 2014

Residential Tenancy Branch

