



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 the landlords' application pursuant to the *Residential Tenancy Act* (the *Act*) for:

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

The tenants did not attend this hearing, although I waited until 9:15 a.m. in order to enable the tenant to connect with this teleconference hearing scheduled for 9:00 a.m. The landlords attended the hearing and were given a full opportunity to be heard, to present sworn testimony, to make submissions and to call witnesses.

The female landlord (the landlord) testified that she sent the male tenant a copy of the landlords' original application for dispute resolution seeking a monetary award of \$3,558.00 as part of the landlords' dispute resolution hearing package by registered mail on February 27, 2014. She provided the Canada Post Tracking Number to confirm this registered mailing to an address provided to her by the male tenant. She also gave sworn testimony that this package was received by the male tenant. In accordance with sections 89(1) and 90 of the *Act*, I find that the male tenant was deemed served with the landlords' original dispute resolution hearing package on March 4, 2014, the fifth day after this registered mailing.

The female landlord testified that she handed a copy of the landlords' original dispute resolution hearing package to the female tenant on February 27, 2014. I am satisfied that the landlords' hearing package was served to the female tenant as declared by the landlord.

On May 5, 2014, the landlords amended their original application for dispute resolution by reducing the amount of their requested monetary award from \$3,558.00 to \$2,358.00 to reflect their success in re-renting the rental premises to a new tenant as of March 15, 2014. The landlord testified that she handed the female tenant a copy of the amended application for dispute resolution on May 5, 2014. I am satisfied that the landlords served a copy of their amended application for dispute resolution to the female tenant as declared by the landlord on May 5, 2014. The landlord testified that the female tenant told her that the male tenant has changed addresses in Alberta. Although the female tenant said that she would provide the landlord with a new address for the male tenant, that has not occurred. Although the landlord has not served the amended application for dispute resolution to the male tenant, I find that the male tenant is at no disadvantage in failing to be served the amended application as the only change made to the landlords' application was to reduce the amount of the landlords' requested monetary award.

Issues(s) to be Decided

Are the landlords entitled to a monetary award for unpaid rent, utilities and losses arising out of this tenancy? Are the landlords entitled to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary award requested? Are the landlords entitled to recover the filing fee for this application from the tenants?

Background and Evidence

This fixed term tenancy began on August 21, 2013. According to the terms of the Residential Tenancy Agreement (the Agreement) entered into written evidence by the landlords, this tenancy was to end on April 30, 2014. Monthly rent was set at \$800.00, payable in advance on the first of each month, plus hydro. The landlords continue to hold the tenants' \$400.00 security deposit paid on or about September 7, 2013.

The landlord gave undisputed sworn testimony that the tenants abandoned the rental unit on February 24, 2014, leaving the keys for the rental unit inside. The landlord said that she contacted the female tenant who informed her that she had returned to live with her father, where documents could be sent to her. She also told the landlord that the male tenant was living in Alberta.

The landlords' original application for a monetary award of \$3,558.00 included the following:

Item	Amount
Unpaid Rent and Utilities Owing as of February 24, 2014	\$1,938.00
Anticipated Loss of Rent March 2014	800.00
Anticipated Loss of Rent April 2014	800.00
Total of Above Items	\$3,538.00

The landlords' amended application reduced the amount of the requested monetary award by \$400.00 for March 2014 and by \$800.00 for April 2014, as the landlords have been successful in locating a new tenant who took occupancy on March 15, 2014. She said that the new tenant began paying the same \$800.00 monthly rent as was being paid by the tenants.

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. I find that the tenants were in breach of their fixed term tenancy agreement because they vacated the rental premises prior to the April 30, 2014 date specified in that Agreement. As such, the landlords are entitled to compensation for losses they 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 owed \$1,938.00 in unpaid rent and utilities as of February 24, 2014, the last day of their tenancy. There is also undisputed sworn testimony and written evidence that the tenants did not pay any rent for the first half of March 2014, the additional rent claimed by the landlords. 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 landlords did attempt to the extent that was reasonable to re-rent the premises as soon as possible following the tenants' abandonment of the rental unit. The landlords were successful in finding a new tenant willing to take occupancy by mid-March 2014, As such, I am satisfied that the landlords have fully discharged their duty under section 7(2) of the *Act* to minimize the tenants' exposure to the landlords' loss for rent for the remainder of their fixed term tenancy.

Under these circumstances, I find that there is undisputed evidence that the landlords are entitled to a monetary award of \$1,938.00 for rent and utilities owing as of February

24, 2014, and a further \$400.00 in the landlords' loss of rent for the first half of March 2014.

I allow the landlords to retain the tenants' security deposit in partial satisfaction of the monetary award issued in this decision. No interest is payable over this period. As the landlords have been successful in their application, I also find that the landlords are entitled to recover their filing fee from the tenants.

Conclusion

I issue a monetary award in the landlords' favour under the following terms, which allows the landlords to recover unpaid rent, utilities and their filing fee, and to retain the security deposit for this tenancy:

Item	Amount
Unpaid Rent and Utilities Owing as of February 24, 2014	\$1,938.00
Loss of Rent March 2014 (50% of \$800.00 = \$400.00)	400.00
Less Security Deposit	-400.00
Filing Fee	50.00
Total Monetary Order	\$1,988.00

The landlords are 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: June 13, 2014

Residential Tenancy Branch

