



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

This hearing dealt with monetary applications by the landlord and the tenants.

The hearing first convened on May 1, 2014. At that time several issues regarding service of evidence and the applications arose, and I determined that that in the interests of administrative fairness it was necessary to adjourn the hearing and make orders regarding service.

The hearing reconvened on June 20, 2014. The landlord and one tenant called in to the teleconference hearing, and at that time the parties confirmed that they had each received the other party's evidence. Both parties were given full opportunity to give testimony and present their evidence. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?
Are the tenants entitled to recovery of their security deposit and furniture rental deposit?

Background and Evidence

On July 30, 2013 the male tenant signed a tenancy agreement for a fixed-term tenancy to end on July 13, 2014. The landlord signed the agreement on August 5, 2013. The agreement indicates monthly rent of \$2600, with furniture included in the rent. In regard to what is included in the rent, the agreement refers to an inventory report; however, no inventory report was included in the landlord's evidence.

At the end of July 2013 the tenants paid the landlord a security deposit of \$1300 and “a full month’s furniture rental deposit” of \$500. The tenants arrived at the rental unit in the evening of August 5, 2013 and on that evening conducted a move-in inspection with the landlord. The tenants did not sign the move-in condition inspection report.

The landlord did not receive the rent for August 2013, and on August 8, 2013 the landlord served the tenants with a notice to end tenancy for unpaid rent. On the same date the tenants gave the landlord notice that they intended to vacate the rental unit on or before August 15, 2013. The tenants vacated the rental unit in August 2013.

Landlord’s Evidence

The landlord stated that there were some items in the rental unit that they wanted addressed, and the landlord was prepared to address those issues. The landlord stated that the representation in the rental ads that the unit had air conditioning was a mistake. The landlord stated that tenants have a responsibility to view a unit before entering into a tenancy agreement, and the tenants failed to do so in this case. The landlord stated that the unit was not unliveable, it simply had some cosmetic issues.

The landlord stated in the application that the tenants left the rental unit keys at the concierge on August 25; however, in the hearing the landlord stated that they did not receive the keys until August 18. The landlord stated that they were unable to re-rent the unit until November 15, 2013, and they re-rented at the lower rent of \$2150. The landlord stated that the new tenant is paying less rent because furniture is not included. The landlord submitted a copy of the tenancy agreement signed by the new tenant, as well as undated copies of rental ads advertising the unit at \$2250 for an unfurnished unit and communications from prospective tenants dated between August 6, 2013 and October 23, 2013.

The landlord has claimed the following compensation:

- 1) \$9100 in unpaid rent and lost revenue for August 1, 2013 to November 14, 2013;
- 2) \$3600 in lost revenue for the difference in rent for the balance of the lease;
- 3) \$100 for cost of serving documentation to tenants;
- 4) \$500 for cost of property manager to prepare for and represent the landlord in the hearing; and
- 5) \$500 for cost of moving furniture requested by the tenant.

Tenants' Evidence

The tenants stated that the landlord grossly misrepresented the rental unit, such that the tenancy agreement was fundamentally breached. The tenants stated that the male tenant viewed the unit on July 28, 2013 and at that time the unit was not in perfect condition. The tenants stated that the landlord assured the tenants they would address the issues in the unit. The tenants stated that when they took occupancy on August 5, 2013 the landlord wanted them to sign the move-in condition inspection report but they refused to do so because it was not accurate.

The tenants identified many problems with the rental unit. The unit was advertised as having air conditioning, but it did not. The carpets were filthy, the hardwood floors were extraordinarily damaged, the kitchen cabinets were damaged, the water line to the fridge had been cut, and there were serious mould issues in the shower. The tenants stated that the unit was certainly not a luxury suite, as it had been advertised. The tenants stated that the furniture package that they had agreed upon was not provided. The tenants stated that they lost all faith that the repairs would be done. The tenants submitted photographs depicting these problems with the unit.

The tenants confirmed that the landlord showed the suite several times to re-rent. The landlord did not communicate with the tenants, so the tenants returned their keys to the concierge. The tenants believe that the new tenant began occupying the rental unit in September 2013, not November 2013 as the landlord claimed. The tenants submitted a written statement from the building manager, who indicated that the rental unit was re-rented in September.

The tenants have claimed monetary compensation of \$1800, representing recovery of their \$1300 security deposit and their \$500 furniture rental deposit.

Analysis

Upon consideration of the evidence and on a balance of probabilities, I find as follows.

The landlord is entitled to unpaid rent and lost revenue for August 1, 2013 to November 14, 2013. I do not accept the tenants' argument that the landlord fundamentally breached the tenancy agreement. Upon viewing the tenants' photographs, I find that the issues with the rental unit were cosmetic, and the tenants chose to end the tenancy rather than allow the landlord reasonable time to rectify the problems or apply for an order for repairs. I accept the landlord's rather more substantial and reliable evidence than that of the tenants regarding whether the new tenant began occupying the unit in

September or November 2013. The landlord submitted not only the tenancy agreement with the new tenant, but also evidence that the landlord was still advertising the unit in October 2013. The tenants' witness, the building manager, did not appear in the hearing and was not available to answer questions; further, the tenants had no other clear evidence that the new tenancy moved into the unit in September 2013.

I find that the landlord is not entitled to the balance of the lost revenue for the remainder of the term of the lease. The landlord did not re-rent the unit on the same terms as those set out in the tenants' agreement, because furniture was not included for the subsequent tenant.

The landlord is not entitled to the amounts claimed for the cost of serving documentation to tenants; the cost of property manager to prepare for and represent the landlord in the hearing; and the cost of moving furniture requested by the tenants. Participants in the dispute resolution process are not entitled to costs associated with the hearing. Nor is the landlord entitled to the costs of doing business, such as hiring an agent or property manager. The landlord's agreement with the tenants regarding "rental" and moving of furniture is not clear, but the tenancy agreement indicates that furniture is included in the rent, so the landlord is not entitled to costs claimed for moving furniture.

The tenants are entitled to recovery of the security deposit. In regard to the \$500 the tenants paid the landlord as a "furniture rental deposit," the Act does not allow for such a deposit, and the furniture was to be included in the rent. I therefore find that additional \$500 paid must also be considered a security deposit. The tenants are therefore entitled to recovery of their full deposit of \$1800.

As the landlord's application was partly successful in an amount over \$5000, I find they are entitled to recovery of their \$100 filing fee.

As the tenants' application was successful, they are entitled to recovery of their \$50 filing fee.

Conclusion

The landlord is entitled to \$9200. The tenants are entitled to \$1850. I grant the landlord an order under section 67 for the balance due of \$7350. This order may be 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: June 30, 2014

Residential Tenancy Branch

