



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPR, MNR, MND, MNSD, MNDC, O

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order of Possession for unpaid rent or utilities; for a Monetary Order for unpaid rent or utilities; a Monetary Order for damage to the unit, site or property; for an Order permitting the landlord to keep all or part of the tenant's security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenant for the cost of this application.

At the outset of the hearing the landlords advised that the tenant is no longer residing in the rental unit, and therefore, the landlords withdraw their application for an Order of Possession. The landlords also withdraw their application for a Monetary Order for damage to the unit, site or property.

The tenant and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties presented other evidence that was not pertinent to my decision. I looked at the evidence that was pertinent and based my decision on this.

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Issue(s) to be Decided

- Are the landlords entitled to a Monetary Order for unpaid rent?
- Are the landlords entitled to a Monetary Order for money owed or compensation for damage or loss?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy originally started on April 01, 2013 for a fixed term tenancy of one year. The tenant was able to move into the unit on March 17, 2013 at a prorated rent for March. A new tenancy agreement for a month to month tenancy was entered into by the parties on April 03, 2014. Rent originally started at \$825.00 and was lowered to \$800.00 when the new tenancy agreement was signed. The tenant paid a security deposit of \$387.50 on March 03, 2013. Both parties attended a move in and move out inspection of the unit and the tenant provided a forwarding address in writing on June 28, 2014.

The landlord testified that the tenant was served with a Two Month Notice to End Tenancy on March 31, 2014 as the landlords wanted to make some renovations to the unit. However, when the parties entered into the new tenancy agreement on April 03, 2014 this Two Month Notice became null in void between the parties. The landlord testified that on June 01, 2014 the tenant gave the landlords notice to end the tenancy by e-mail and stated that the tenant wanted to reinstate the Two Month Notice and that the tenant would vacate the unit on June 30, 2014. The landlord testified that when the tenant signed the new tenancy agreement the tenant was aware this had made the Two Month Notice null in void.

On June 01, 2014 the tenant failed to pay rent for June and a 10 Day Notice to End Tenancy for unpaid rent was served upon the tenant on June 02, 2014. This Notice had

an effective date of June 11, 2014 and was put under the tenant's door. The Notice informed the tenant that he owed rent of \$800.00 and had five days to either pay the rent or dispute the Notice. The tenant did not pay the rent and did not file an application to dispute the notice. The landlords seek to recover unpaid rent for June, 2014 of \$800.00 as the tenant was not entitled to compensation for the Two Month Notice.

The landlords testified that as the tenant gave the landlord late notice to end the tenancy the landlords are entitled to recover a loss of rent for July, 2014 as the earliest the tenant could have legally ended the tenancy would have been July 31, 2014. The landlords therefore seek to recover \$800.00 in lost rent for July. The landlords agree that they did not advertise the rental unit through June or July to get it rented for July 01, 2014 as the landlords started renovations on the unit on August 03, 2014.

The landlords testified that the tenant had agreed on the move out condition inspection report that the landlords could keep the security deposit of \$800.00 for rent for June, 2014.

The land lords seek to amend their application and testified that they had made an error on the application form and claimed \$1,988.00 when it should have been \$1,600.00.

The tenant disputed the landlords' claim that the tenant owes rent for June, 2014. The tenant testified that as the landlords had served the tenant with a Two Month Notice to End Tenancy for landlords use of the property on March 31, 2014 the tenant would have been entitled to withhold his last month's rent in compensation for that Two Month Notice.

The tenant testified that he had discussed with the landlord when he got the Two Month Notice that he would move out when he could. The tenant testified that he did sign a new tenancy agreement for a month to month tenancy on April 03, 2014 but still relied on the Two Month Notice and gave his Notice on June 01, 2014.

The tenant disputed that the landlords are entitled to recover a loss of rent for July, 2014. The tenant testified that the landlords did not advertise the unit for rent after receiving the tenant's Notice on June 01, 2014 as the landlords intended to renovate the unit and not re-rent it in July, 2014.

The tenant disputed that he agreed in writing on the move out condition inspection report that the landlords could keep the tenant's security deposit. The tenant testified that the landlords had already told the tenant that they had spent the security deposit as they were having a hard time paying bills.

Both parties decline the opportunity to cross examine the other party.

Analysis

Section 26 of the *Act* states:

A tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

The tenant argued that he did have a right to deduct the last month's rent in compensation for the Two Month Notice to End Tenancy which was served upon the tenant by the landlords on March 31, 2014. The landlords argue that this Two Month Notice became null in void after the parties entered into a new tenancy agreement on April 03, 2014.

Having considered the evidence before me I find both parties did sign a new tenancy agreement on April 03, 2014 for the monthly rent of \$800.00. When a new tenancy agreement is made between the parties then they agree to follow the terms of this new agreement. In normal circumstances a Notice to End Tenancy can only be withdrawn by the mutual agreement of both parties; however, by entering into a new tenancy

agreement this would have made any past Notices to End Tenancy null in void and the tenant would not be entitled to receive compensation equivalent to one month's rent for that former Two Month Notice. Consequently I find the landlords have established a claim to recover unpaid rent for June, 2014 of \$800.00.

With regard to the landlords' claim for a loss of rent for July, 2014; I refer the parties to s. 45(1) of the *Act* which states:

45 (1) *A tenant may end a periodic 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, and

(b) 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.

In this matter the tenant did not give the landlord proper notice on the day before the day that rent was due. The tenant's notice was given on June 01, 2014 not May 31, 2014. The tenant's Notice was also given by email and e-mail is not a recognised method of providing written notice. However, under s. 7(2) of the *Act* it states:

7 (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.

The landlords agreed that they did not minimize their loss by trying to get the unit re-rented in a timely manner for July 01, 2014 and also stated that they started to renovate the unit. Consequently, the landlords' claim for a loss of rental income must be denied as they intention was to not re-rent the unit but rather start renovations on the unit. the landlords' claim for a loss of rent for July, 2014 is therefore dismissed.

With regard to the landlords' claim to keep the security deposit of \$387.50; the landlords testified that the tenant had agreed in writing that the landlords could keep the security deposit to offset against June rent; however, this section of the move out condition inspection form has not been signed by the tenant. I therefore find I have insufficient evidence to show that the tenant has agreed in writing that the landlords may keep the security deposit. I do; however, find the landlords are entitled to keep the security deposit in partial satisfaction of the unpaid rent for June, 2014 pursuant to s. 38(4)(b) of the *Act*.

A Monetary Order has been issued to the landlords for the following amounts:

Unpaid rent for June	\$800.00
Less security deposit	(-\$387.50)
Total amount due to the landlords	\$412.50

Conclusion

I HEREBY FIND in partial favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$412.50**. The Order must be served on the respondent. Should the respondent fail to comply with the Order, the Order may be enforced through the Provincial Court 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: August 19, 2014

Residential Tenancy Branch

