



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, 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, 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;
- authorization to recover the filing fee for this application from the tenants, pursuant to section 72.

Both landlords and both tenants attended the hearing and were each given a full opportunity to be heard, to present their sworn testimony, to make submissions and to call witnesses. Tenant EA ("tenant") confirmed that she had authority to speak on behalf of the other tenant, her husband "GM," as an agent at this hearing (collectively "tenants").

The tenant confirmed that both tenants received the landlords' application for dispute resolution hearing package ("Application") by way of registered mail. In accordance with sections 89 and 90 of the *Act*, I find that both tenants were duly served with the landlords' Application.

The tenant testified that the landlords were served with the tenants' written evidence package in the week prior to this hearing, by way of registered mail. The landlords confirmed receipt of the tenants' written evidence package and advised that they had a chance to review the information and that they had no objection to proceeding with the hearing on the basis of this evidence. In accordance with sections 89 and 90 of the *Act*, I find that the landlords were duly served with the tenants' written evidence package.

Issues to be Decided

Are the landlords entitled to a monetary award for unpaid rent and utilities?

Are the landlords entitled to retain all or a portion of the tenants' security deposit and pet damage 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

Both parties agreed that this fixed term tenancy began on September 1, 2014 and was to end on February 28, 2015, as per the tenancy agreement. Monthly rent in the amount of \$1,450.00 was payable on the first day of each month. A security deposit of \$725.00 and a pet damage deposit of \$725.00 were paid by the tenants and the landlords continue to retain both deposits. Both parties provided a copy of the written tenancy agreement for this hearing. The tenants occupied the upper level of a house, while other tenants occupied the lower level. Both parties agreed that the tenants were required to pay 2/3 of the total utility charges for the entire house.

Both parties agreed that the tenants provided written notice to the landlords on November 14, 2014, to vacate the rental unit on December 14, 2014. Both parties agreed that the tenants vacated the rental unit early on December 1, 2014 and advised the landlords about this change on December 1, 2014. The tenant stated that the landlords were provided with the tenants' forwarding address in writing at the beginning of December 2014.

The landlords stated that they advertised the rental unit for re-rental as of November 15, 2014. The landlords indicated that new tenants began occupying the rental unit at the same rental rate of \$1,450.00 per month, as of January 15, 2015. The landlords seek to recover \$1,450.00 for loss of December 2014 rent and \$725.00 for loss of January 1 to 15, 2015 rent, for the tenants' breach of the fixed term tenancy agreement. The landlords also seek to recover \$479.28 for loss of the tenants' 2/3 portion of gas, electric and water charges from November 15, 2014 until January 15, 2015. The landlords agreed that rent until November 30, 2014 was paid in full by the tenants as well as utility charges until November 15, 2015. The landlords also seek to recover the \$50.00 filing fee for their Application.

The tenants claimed that they are not responsible for the rent and utility losses from December 2014 to January 2015 because they provided one month's written notice to vacate the rental unit and they did not occupy the rental unit after December 1, 2014.

The tenants also stated that the landlords should have made better and quicker efforts to re-rent the rental unit, in order to mitigate their losses.

Analysis

Pursuant to section 63 of the *Act*, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute.

Both parties agreed to the following final and binding settlement of all issues with respect to this entire tenancy:

1. Both parties agreed that all monetary issues arising out of this tenancy will be satisfied by the tenants' agreement to pay the landlords \$602.14 by April 3, 2015, and by the tenants' agreement to allow the landlords to retain the tenants' entire security deposit of \$725.00 and pet damage deposit of \$725.00;
2. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the landlords' Application and any issues arising out of this tenancy;
3. Both parties agreed that this settlement agreement constitutes a final and binding resolution of the tenants' potential monetary claims against the landlords arising out of this tenancy;
4. Both parties agreed that they will not initiate any further claims or applications against each other at the Residential Tenancy Branch, with respect to any issues arising out of this tenancy.

These particulars comprise a full and final settlement of all aspects of this dispute and arising out of this tenancy. Both parties gave verbal sworn affirmation at the hearing that they understood and agreed to the above settlement terms, free of any duress or coercion. Both parties testified that they understood and agreed to these settlement terms as legal, final, binding and enforceable, settling all aspects of this dispute and arising out of this tenancy.

Conclusion

To give effect to the settlement reached between the parties, I order the landlords to retain the tenants' entire security deposit of \$725.00 and the tenant's entire pet damage deposit of \$725.00.

In order to implement the above settlement reached between the parties, I issue a monetary Order in the landlords' favour in the amount of \$602.14. I deliver this Order to the landlords in support of the above agreement for use **only** in the event that the tenants fail to pay \$602.14 to the landlords by April 3, 2015. The landlords are provided with this Order in the above terms and the tenant(s) must be served with a copy of this Order in the event that the tenants fail to pay \$602.14 to the landlords by April 3, 2015. Should the tenant(s) fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

As this matter was settled between the parties, rather than a decision being made on the merits, I decline to award the \$50.00 filing fee to the landlords. The landlords must bear the cost of their own \$50.00 filing fee.

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: March 23, 2015

Residential Tenancy Branch

