



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNDC, MNSD, FF

Introduction

There are applications filed by both parties. The landlord seeks a monetary order for unpaid utilities, for money owed or compensation for damage or loss, to keep all or part of the security deposit and recovery of the filing fee. The tenants are also seeking a monetary order for the return of double the security deposit and recovery of the filing fee.

The landlord attended the hearing by conference call and gave undisputed testimony. The tenant did not attend or submit any documentary evidence. The landlord states that the tenants were served with the notice of hearing package by Canada Post Registered Mail on August 26, 2014.

I accept the undisputed testimony of the landlord and find that the tenant has been properly served with the landlord's notice of hearing package and the submitted documentary evidence by Canada Post Registered Mail on August 26, 2014.

The landlord has confirmed receipt of the tenant's application for dispute and her understanding of the tenant's application.

After waiting 19 minutes past the start of the scheduled hearing time, the tenant's application was dismissed without leave to reapply as the landlord was in attendance to respond to the tenant's application.

Issue(s) to be Decided

Is the landlord entitled to a monetary order?
Is the landlord entitled to retain the security deposit?

Background and Evidence

This tenancy began on October 15, 2013 on a fixed term tenancy ending on October 15, 2014 and then ends as shown by the submitted copy of the signed tenancy agreement. The monthly rent is \$1,500.00 payable on the 1st of each month and a security deposit of \$750.00 was paid on October 15, 2013.

The landlord states that the tenant breached the signed tenancy agreement by ending the tenancy. The landlord states that notice was received on March 25, 2014 from the tenants that could no longer afford to stay. The landlord states that the tenancy was ended prematurely with 7 months remaining on the fixed term tenancy. The landlord also states that the tenant vacated the rental unit and has failed to pay outstanding utilities. The landlord states that at the end of the tenancy the tenants failed to provide their forwarding address in writing and was not aware of the tenant's new address until the landlord received the tenant's application for dispute hearing package.

The landlord seeks a monetary claim of \$1,894.32, which consists of \$1,500.00 in loss of rental income for April 2014 and \$394.32 for unpaid utilities.

The landlord states after receiving the tenant's notice on March 25, 2014, she decided that she would not be able to re-rent the unit and moved into the rental property on April 15, 2014. The landlord clarified that she did not attempt to try and find a new tenant.

The landlord has also submitted a copy of the local municipality's notice of account which states that the landlord owes outstanding utilities that ended on March 31, 2014 totalling, \$394.32. The landlord clarified that the utilities were not included in the tenancy and that the tenants were responsible for its usage.

Analysis

Section 67 of the *Act* establishes that if damage or loss results from a tenancy, an Arbitrator may determine the amount of that damage or loss and order that party to pay compensation to the other party. In order to claim for damage or loss under the *Act*, the party claiming the damage or loss bears the burden of proof. The claimant must prove the existence of the damage/loss, and that it stemmed directly from a violation of the agreement or a contravention of the *Act* on the part of the other party. Once that has been established, the claimant must then provide evidence that can verify the actual monetary amount of the loss or damage. In this case, the onus is on the landlord to

prove on the balance of probabilities that the tenant caused the damage and that it was beyond reasonable wear and tear that could be expected for a rental unit of this age.

The landlord's claim for loss of rental income has not been established. Although it is undisputed that the tenant prematurely ended the fixed term tenancy on March 31, 2014, the landlord has admitted to failing to mitigate any possible losses by attempting to re-rent the unit for April 1, 2014. The landlord admitted to moving into the rental property on April 15, 2014 and prevented any possible chance of recovering any possible losses of rental income. This portion of the landlord's claim is dismissed.

On the landlord's claim for unpaid utilities of \$394.32, I find that the landlord has been successful. The tenants were responsible for all utilities as per the signed tenancy agreement. The landlord has provided a copy of an invoice from the local municipality which shows that the tenants failed to pay the outstanding utilities at the end of the tenancy as of March 31, 2014. The landlord has provided direct testimony that the tenants have failed to pay the outstanding amount as of the date of this hearing. The landlord has established a monetary claim of \$394.32 for unpaid utilities.

The landlord is also entitled to recovery of the \$50.00 filing fee.

I order that the landlord retain the \$394.32 for unpaid utilities and \$50.00 for the recovery of the filing fee from the \$750.00 security deposit in satisfaction of the claim and grant a monetary order under section 67 for the balance due of \$305.68 to the tenants.

The tenants are granted a monetary order for \$305.68.

Conclusion

The tenant's application is dismissed.

The landlord may retain \$444.32 from the security deposit.

The tenants are granted a monetary order for \$305.68

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 03, 2015

