



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlords' application for a Monetary Order for unpaid rent or utilities; for an Order permitting the landlords to keep all or part of the tenants' 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 tenants for the cost of this application.

The tenant, the tenant's co-signer and the 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 tenants provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Are the landlords entitled to a monetary Order for a loss of rental income?
- Are the landlords permitted to keep all or part of the security deposit?

Background and Evidence

The parties agreed that this tenancy started on October 15, 2013 for a fixed term tenancy which was not due to expire until December 31, 2014. The tenant gave notice to the landlords and vacated the rental unit on June 25, 2014. Both parties attended the move in and move out condition inspection of the rental unit at the start and end of the tenancy and the tenant provided her forwarding address in writing on July 12, 2014 on the move out inspection report. Rent for this unit was \$825.00 per month due on the 1st of each month. The tenant paid a security deposit of \$412.50 at the start of the tenancy.

The landlord JW testified that that in May, 2014 the tenant gave the landlords notice to end the tenancy. The landlords attempted to re-rent the unit and placed the first advertisement on May 26, 2014. This advertisement was refreshed a few times and on July 16 it was deleted and reposted to keep it current. The landlord testified that the unit was not re-rented until September 01, 2014. The landlords have provided copies of the advertisement in documentary evidence.

JW testified that the condition of the rental unit was left relatively the same as at the start of the tenancy; however, the tenant did sign the inspection report allowing the landlords to keep the security deposit to apply to a loss of rent for July, 2014. The landlords therefore seek to recover a further amount for July of \$412.50 and a loss of rental income for August, 2014 of \$825.00.

The tenant DD agreed that she gave notice to end the tenancy in May, 2014. DD testified that when she first signed the tenancy agreement she had informed the landlord that she was on the waiting list for BC Housing and if a unit became available the tenant would need to move. DD testified that the landlords had said if a BC Housing unit became available they would be able to sort something out. DD testified that when she was offered a unit with BC Housing she had to take it or risk being put to the bottom of the list. DD testified that she tried to ask the landlord but could not pay any more money as DD had to pay her new security deposit and rent. DD testified that she agreed the landlords could keep the security deposit under duress.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I refer the parties to s. 45(2) of the Act which states:

(2) A tenant may end a fixed term 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,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) 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.

Unless the tenants had something in writing from the landlord that allowed the tenants to end the tenancy earlier than the end date specified on the tenancy agreement then the tenants must comply with s. 45(2)(b) of the *Act* and are not entitled to end the tenancy earlier than the date specified on the tenancy agreement as the end of the tenancy.

The landlord has a statutory duty to mitigate any loss by attempting to re-rent the unit in a timely manner. I am satisfied that the landlords made reasonable attempts to re-rent the unit but were not able to do so until September 01, 2014. Consequently, the tenants are responsible for any loss of rental income up to this date. I find the landlords are therefore entitled to recover from the tenant and co signatory an amount of \$1,650.00. As the tenant agreed in writing that the landlord could keep the security deposit of \$412.50 then this amount has been deducted from the loss of rent. The landlords have therefore established a claim for **\$1,237.50** pursuant to s. 67 of the *Act*.

As the landlords' claim has merit I find the landlords are entitled to recover the filing fee of **\$50.00** from the tenants pursuant to s. 72(1) of the *Act*.

Conclusion

I HEREBY FIND in favor of the landlords' monetary claim. A copy of the landlords' decision will be accompanied by a Monetary Order for **\$1,287.50**. The Order must be served on the respondents. If the respondents fail to pay the Order, the Order is enforceable 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: March 05, 2015

Residential Tenancy Branch

