



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 landlord's application for a Monetary Order for unpaid rent; 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 tenants and landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing, and the landlords were permitted to provide additional evidence after the hearing had concluded to the Arbitrator and the tenants. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure.

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 started on June 27, 2014 when the tenants entered into a verbal agreement to rent this unit for \$2,500.00 per month. The tenants paid \$2,000.00 and a damage deposit of \$1,250.00 at that time. This tenancy was agreed to be a two year fixed term tenancy and the tenants filled in a rental application. The landlord was to provide the tenants with a tenancy agreement in writing.

The landlord GP testified that the tenants came back to the landlord prior to taking possession of the rental unit and said they could no longer rent the unit. A mutual agreement was drawn up and signed by both parties. In this agreement the parties agreed to end the tenancy on July 14, 2014 and the tenants agreed to forfeit the rent paid of \$2,000.00 and the damage deposit of \$1,250.00 to compensate the landlords for the loss of income. The rental agreement that had been prepared by the landlords was subsequently torn up.

GP testified that the unit was re-rented for September 01, 2014. GP referred to their documentary evidence showing a letter from the new tenant stating his tenancy started on September 01, 2014. This letter has been signed with that person's first name only. The landlord seeks an Order to keep the security deposit of \$1,250.00 and the rent of \$2,000.00 to cover a loss of revenue for July and August, 2014.

The tenants testified that they had agreed that the landlords could keep the rent and security deposit paid as they were forced to change their minds about living in the unit because their daughter did not feel that she could live in this unit. The tenants agreed that they signed the mutual agreement to end the tenancy. The tenants testified that the landlords verbally agreed that if the unit was re-rented in August that the landlords would return an amount of the rent paid. The tenants testified that their tenancy was not due to start until July 15, 2014 as they still had their other rental unit which did not end until August 01, 2014. As the landlords wanted renters in this unit for July 01, 2014 they agreed to comprise to July 15, 2014. Therefore the rent due for July should have been

\$1,250.00 not the \$2,000.00 paid by the tenants and the landlords were not entitled to rent for August as the landlords had re-rented the unit for August 01, 2014. The tenant testified that they saw the new tenants moving into the unit.

GP testified that they have a written tenancy agreement from the new tenants showing the unit was re-rented for September 01, 2014. The landlords were requested to provide a copy of that tenancy agreement to the Arbitrator by fax and to the tenants by leaving a copy in the landlords mail box for the tenants to collect. The landlords provided a copy of the tenancy agreement in place with the new tenant. This was signed on August 07, 2014 for a tenancy starting September 01, 2014.

GP testified that they were going on vacation during August so they did provide a key for the unit to the new tenant on August 07, 2014 when the new tenancy agreement was signed; however, the new tenant's tenancy was not due to start until September, 01, 2014. The landlord testified that he has in fact lost money because the tenants did not abide by the terms of their agreement.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. I am satisfied from the undisputed evidence before me that a two year fixed term tenancy was created between the landlords and these tenants and the sum of \$2,000.00 for rent and \$1,250.00 for a damage deposit was exchanged. I refer the parties to s. 45(2) of the *Act* which indicates how tenants may end a fixed term tenancy:

45(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.

In this matter the tenants changed their mind about renting the unit and the parties signed a mutual agreement to end the tenancy on July 14, 2014. In this agreement the tenants also agreed to pay the landlords \$2,000.00 and the damage deposit of \$1,250.00 to compensate the landlords for their loss of income.

The tenants argued that the landlords re-rented the unit on August 01, 2014 and therefore the landlords should return the money paid by the tenants. The landlords argued that the unit was not re-rented until September 01, 2014. Having reviewed the evidence before me I am satisfied that the landlord has provided sufficient evidence to show that the rental unit was re-rented for September 01, 2014. The landlords have provided a letter from the new tenant which states his tenancy started on September 01, 2014 and the tenancy agreement provided by the landlords in documentary evidence also confirms that the tenancy started on September 01, 2014. A landlord may allow the incoming tenant access to the unit by providing keys to that incoming tenant prior to the start date of the tenancy. I have insufficient evidence from the tenants to prove that the new tenancy started on August 01, 2014.

I therefore uphold the landlords' claim to keep the \$2,000.00 paid in rent and \$1,250.00 paid for the damage deposit as agreed between the parties in the mutual agreement to end tenancy.

During the hearing the landlords did not request any further monetary award. The landlords' claim is for \$3,750.00. The landlords hold \$3,250.00. As the landlords agreed to end the tenancy on July 14, 2014, the landlords would not be entitled to any further monetary award other than the \$50.00 filing fee pursuant to s. 72(1) of the *Act*.

Conclusion

I hereby uphold the landlords' claim to keep rent of \$2,000.00 and the damage deposit of \$1,250.00. I grant the landlord a Monetary Order pursuant to Section 72(1) of the *Act* in the amount of **\$50.00**. This Order must be served on the Respondents and may then be filed in the Provincial Court (Small Claims) and enforced as an Order of that Court if the Respondents fail to comply with the Order.

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: April 08, 2015

Residential Tenancy Branch

