



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for unpaid rent and utilities. Both parties appeared or were represented at the hearing and were provided the opportunity to make relevant submissions, in writing and orally pursuant to the Rules of Procedure, and to respond to the submissions of the other party.

Preliminary and Procedural Matters

In filing this Application the landlords had included an amount for a personal loan to the tenant; however, at the commencement of the hearing, the landlords reduced their monetary claim to exclude the personal loan that resolved in the appropriate forum and has since been satisfied. The landlord also requested that the monetary claim worksheet be amended to correct a mathematical error. The application was amended accordingly.

Issue(s) to be Decided

1. Have the landlords established an entitlement to recover unpaid rent and utilities from the tenant?
2. Are the landlords authorized to retain the security deposit?

Background and Evidence

The tenancy commenced in June 2012 and the landlords collected a security deposit of \$1,000.00. The written tenancy agreement provides that the monthly rent is \$2,400.00 and that utilities are not included in rent. The tenancy ended in August 2014.

It was undisputed that the tenant ran into financial difficulty and the parties had discussions about the situation in February 2013. As a result, for the months of February 2013 through September 2013 the tenants did not pay rent and continued to

reside in the rental unit. Starting October 2013 the tenants started paying rent at a lesser amount of \$2,100.00 for the remainder of the tenancy with the exception of March 2014 when the rent cheque was returned for insufficient funds.

The landlord had submitted that after the tenant's rent cheque for February 2013 was returned, the landlords and tenants had a number of discussions and that as a result of those discussions the landlords were prepared to reduce the rent to \$2,100.00 per month in an effort to keep the tenancy going until the tenant collected money that was owed to him and in recognition that the house would be put up for sale and the tenants would accommodate showings to prospective purchasers. The landlord submitted that the tenants agreed to this arrangement and promised to catch up on the rental arrears.

The landlords seek recovery of unpaid rent for the months of February 2013 through September 2013 at the reduced rent of \$2,100.00 per month, rent of \$2,100.00 for March 2014, and water bills in the sum of \$1,712.17 that were transferred to the landlords' property tax account by the city. In support of the claim the landlords provided a ledger that reflects the above charges, less 7 partial payments of \$200.00 made by the tenant between April and July 2014, a \$250.00 payment in August 2014 and an agreed upon credit of \$2,000.00 for work done on the property by the tenant. After taking into account the partial payments, and correcting any mathematical errors, the balance of rent and utilities owed to the landlords is \$16,962.17.

Both parties provided consistent testimony that the partial payments of \$200.00 were paid to be applied against a \$2,000.00 personal loan the landlord provided to the tenant; however, both parties agreed that the personal loan was subsequently paid in the full amount of \$2,000.00 and that it is fair to apply the partial payments toward the unpaid rent.

Both parties provided consistent testimony that the tenant had performed work at the property and that the parties had agreed the work had a value of \$2,000.00.

The tenant agreed that he owed rent for the month of March 2014. However, the tenant questioned whether the landlord had waived entitlement to collect rent for the period of February 2013 through September 2013. According to the tenant, when the tenant approached the landlord about his financial situation early in 2013 the landlord told the tenants to stay in the rental unit so that the property would not be vacant; however, the tenants would be required to permit showings of the rental unit to prospective purchasers. The tenant was of the position that he and his wife were uncertain they had to pay rent for the months of February through September 2013 and wondered whether they were housesitting during that period of time. The tenant submitted that the

landlords indicated that rent was being reduced to \$2,100.00 in September 2013 and that is the amount they started paying for October 2013 onwards. The tenant submitted that the tenants were very accommodating, but also inconvenienced, with respect to open houses and showing of the unit to prospective purchasers while it was for sale.

With respect to the landlords' request to recover the cost of water from the tenant, the tenant stated he was unaware that he was responsible for paying for water as he had never paid for water under previous tenancies and was of the belief landlords customarily pay for water. The tenant read his copy of the tenancy agreement during the hearing and stated that there is a strike through water, electricity and heat under the section that provides for "What is Included in Rent".

Analysis

Upon consideration of everything presented to me, I provide the following findings and reasons.

Under the Act, a tenant is required to pay rent to the landlord pursuant to their tenancy agreement. In this case, the parties executed a written tenancy agreement indicating rent was \$2,400.00 per month. It is undisputed that the tenant did not pay rent for the months of February 2013 through September 2013 and March 2014. The issue under dispute is whether the landlords waived entitlement to collect rent for the months of February 2013 through September 2013. Unfortunately, the parties did not reduce their agreement with respect to reduced rent or waiver of rent for certain months to writing and I am left with disputed verbal testimony.

The parties did not present any evidence to suggest the parties were not dealing at arm's length. Considering the tenant was fairly compensated by the landlords for work done on the property, in my view, points to the fact that the parties were in fact dealing at arm's length.

On the balance of probabilities, I find it unlikely that landlords entitled to collect rent of \$2,400.00 per month under the terms of a written tenancy agreement would waive entitlement to that entire amount for several months when the parties were dealing at arm's length. Rather, I find that a \$300.00 rent reduction in recognition of inconvenience and loss of privacy while the house was for sale to be more realistic and likely. Therefore, I reject the tenant's position that rent was waived entirely for the months of February 2013 through September 2013 and I find the landlords entitled to recover unpaid for those months in the amount of \$2,100.00 per month, as requested by the landlords.

As it was undisputed that the tenant failed to pay rent for March 2014 I award the landlords \$2,100.00 for that month.

The landlords had given credit to the tenant for several partial payments and work performed by the tenant that the tenant acknowledged reflected the payments he made to the landlord and their agreement with respect to the value of work performed by the tenant. Accordingly, those credits have been applied against the rent owed to the landlords.

Under the Act, a tenancy agreement must indicate what is included in rent, including utilities if any. After hearing the tenant testify that his tenancy agreement has a strike through "water" under the heading "What is included in Rent" I am satisfied that the cost of water incurred during the tenancy are the tenant's responsibility. Therefore, I grant the landlords' request to recover unpaid water bills of \$1,712.17 that were transferred to the landlords' property tax account by the city.

As the landlords were successful with this Application, I further award the landlords recovery of the \$100.00 filing fee paid for this Application.

I authorize the landlords to retain the tenants' security deposit in partial satisfaction of the amounts awarded to the landlord.

In light of all of the above, I provide the landlords with a Monetary Order calculated as follows:

Unpaid Rent: February 2013 – September 2013	\$16,800.00
Unpaid Rent: March 2014	2,100.00
Water bills	1,712.17
Filing fee	100.00
Less: credit for work performed by tenant	(2,000.00)
Less: 7 payments of \$200.00 made by tenant	(1,400.00)
Less: 1 payment of \$250.00 made by tenant	(250.00)
Less: security deposit	<u>(1,000.00)</u>
Monetary Order for landlords	\$16,062.17

To enforce the Monetary Order it must be served upon the tenant and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the security deposit and has been provided a Monetary Order for the balance of \$16,062.17 to serve and enforce.

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: May 1, 2015

Residential Tenancy Branch

