



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 an Application for Dispute Resolution filed by the Landlord on April 13, 2015 seeking to obtain a Monetary Order for unpaid rent or Utilities; to keep all or part of the security and or pet deposit; and to recover the cost of the filing fee from the Tenants for this application.

The hearing was conducted via teleconference and was attended by the Landlord. No one was in attendance on behalf of the Tenants. The Landlord provided affirmed testimony that each respondent Tenant was served notice of this application, this hearing and his evidence by registered mail on April 15, 2015.

Canada Post tracking information submitted in the Landlord's oral testimony confirmed that the package sent to the corporate Tenant was signed received on April 16, 2015 and the package sent to the occupant Tenant was signed received on April 17, 2015.

Based on the above, I find that each respondent Tenant was sufficiently served notice of this proceeding and application. Accordingly, I proceeded in absence of the respondent Tenants.

Issue(s) to be Decided

Has the Landlord proven entitlement to monetary compensation from the named respondents?

Background and Evidence

The Landlord submitted evidence that the occupant Tenant entered into a written fixed term tenancy agreement, naming the corporate Tenant and the occupant. The tenancy began on January 1, 2015 and was scheduled to end on March 31, 2015. Rent of \$2,500.00 was payable on or before the first of each month and on January 12, 2015 the Tenants paid \$1,250.00 as the security deposit.

The Landlord submitted documentary evidence in support of their application which included, among other things, copies of: the signed tenancy agreement; a chronological list of events; emails, and text messages sent between the parties.

The Landlord pointed to messages sent from the occupant Tenant on March 28 between 4:24 pm and 4:52 pm whereby the occupant Tenant confirmed that they would be extending his tenancy for the month of April 2015. The Landlord asserted that he had no reason to doubt the occupant Tenant and given his past dealings with the corporate and occupant Tenants he had no reason to doubt that the payment for April 2015 rent would be forthcoming from the corporate Tenant.

However, on April 2, 2015 the Landlord received an email from the corporate Tenant stating the occupant was no longer living at the rental unit. The Landlord responded and informed the corporate Tenant that the occupant Tenant's possessions were still in the rental unit. The occupant Tenant vacated the rental unit as of 9:00 p.m. on April 3, 2015 and returned the keys to the Landlord at that time.

The Landlord submitted documentary evidence in support of his attempts to re-rent the unit for as soon as possible. Despite his efforts he was not able to re-rent the unit for April 2015 and is now seeking to recover the unpaid April 2015 rent of \$2,500.00.

Analysis

The *Residential Tenancy Act* (the *Act*), stipulates provisions relating to these matters as follows:

Section 44(3) of the *Act* states that if, on the date specified as the end of a fixed term tenancy agreement that does not require the tenant to vacate the rental unit on that date, the landlord and tenant have not entered into a new tenancy agreement, the landlord and tenant are deemed to have renewed the tenancy agreement as a month to month tenancy on the same terms.

Section 26 of the *Act* stipulates that a tenant must pay rent in accordance with the tenancy agreement; despite any disagreements the tenant may have with their landlord.

Section 45 (1) of the *Act* stipulates that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice, and 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.

Section 7 of the *Act* provides as follows in respect to claims for monetary losses and for damages made herein:

- 7(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
- 7(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Section 67 of the Residential Tenancy Act states:

Without limiting the general authority in section 62(3) [*director's authority*], if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Section 72 (2)(b) provides that if the director orders a tenant to a dispute resolution proceeding to pay any amount to the landlord, including an amount under subsection (1), the amount may be deducted from any security deposit or pet damage deposit due to the tenant.

Section 72(1) of the Act stipulates that the director may order payment or repayment of a fee under section 59 (2) (c) [*starting proceedings*] or 79 (3) (b) [*application for review of director's decision*] by one party to a dispute resolution proceeding to another party or to the director.

After careful consideration of the foregoing, documentary evidence, and on a balance of probabilities I find as follows:

The undisputed evidence is the written fixed term tenancy agreement ended on March 31, 2015 and on March 28, 2015 at 4:26 p.m. and at 4:52 p.m. the Tenant confirmed via text message that he would be continuing his tenancy for the month of April 2015. Based on the foregoing, and the fact that the occupant Tenant continued to reside in the rental unit into April 2015, I conclude that the tenancy continued on a month to month basis starting April 1, 2015, pursuant to section 44(3) of the *Act*.

The Tenants failed to pay rent for April 2015, in breach of section 26 of the *Act*, despite the Tenants remaining in possession of the unit until April 3, 2015. Furthermore, the occupant Tenant vacated the rental unit without proper notice as required under section 45 of the *Act*. The Landlord took immediate action to attempt to re-rent the unit; however, he did not succeed in getting a new tenant for the remainder of April 2015.

Based on the foregoing, I find the Tenants' breaches caused the Landlord to suffer a loss of rent for April 2015. Accordingly, I grant the Landlord's application for April 2015 rent in the amount of **\$2,500.00**.

The Landlord has succeeded with their application; therefore, I award recovery of the **\$50.00** filing fee, pursuant to section 72(1) of the Act.

Monetary Order –This claim meets the criteria under section 72(2)(b) of the *Act* to be offset against the Tenant's security deposit plus interest as follows:

Unpaid April 2015 Rent	\$2,500.00
Filing Fee	<u>50.00</u>
SUBTOTAL	\$2,550.00
LESS: Security Deposit \$1,500.00 + Interest 0.00	<u>-1,250.00</u>
Offset amount due to the Landlord	<u>\$1,300.00</u>

Conclusion

The Landlord was successful with their application and was awarded monetary compensation in the amount of \$2,550.00. That monetary award was offset against the Tenants' \$1,250.00 security deposit leaving a balance due to the Landlord of \$1,300.00.

The Landlord has been issued a Monetary Order in the amount of **\$1,300.00**. This Order is legally binding and must be served upon the Tenants. In the event that the Tenants do not comply with this Order it may be filed with the Small Claims Court and enforced 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: September 21, 2015

Residential Tenancy Branch

