



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 the landlords' Application for Dispute Resolution seeking a monetary order.

The hearing was conducted via teleconference and was attended by the landlord's agent

The landlord testified each tenant was served with the notice of hearing documents and this Application for Dispute Resolution, pursuant to Section 59(3) of the *Residential Tenancy Act (Act)* by registered mail on July 17, 2015 in accordance with Section 89. Section 90 of the *Act* deems documents served in such a manner to be received on the 5th day after they have been mailed. Tracking information from Canada Post confirmed the tenants both received the packages on July 21, 2015.

Based on the testimony of the landlord, I find that each tenant has been sufficiently served with the documents pursuant to the *Act*.

Issue(s) to be Decided

The issues to be decided are whether the landlords are entitled to a monetary order for unpaid rent; for lost revenue; for yard work; for all or part of the security and pet damage deposits and to recover the filing fee from the tenants for the cost of the Application for Dispute Resolution, pursuant to Sections 37, 38, 45, 67, and 72 of the *Act*.

Background and Evidence

The landlord submitted into evidence a copy of a tenancy agreement signed by the parties on November 28, 2015 for a 1 year fixed term tenancy beginning on December 1, 2014 for the monthly rent of \$1,600.00 due on the 1st of each month with a security deposit of \$800.00 and a pet damage deposit of \$800.00 paid.

The tenancy agreement included an addendum indicating the tenants were required to perform lawn maintenance as well as a separate lawn and garden maintenance agreement signed by the tenant. The maintenance agreement stipulates the tenants

must cut the grass once every one to two weeks and that the edges should be kept trimmed and neat.

The landlords submitted the tenants failed to pay rent for the month of June 2015 and that they moved out of the rental unit by June 30, 2015. The landlords seek unpaid rent in the amount of \$1,600.00.

The landlords submitted that the tenants had failed to clean the rental unit and property and left the lawn uncut and not weeded as per the agreements. The landlord testified that they began advertising in July 2015 to re-rent the unit in a local newspaper and on Kijiji and Craigslist but that they were unable secure new tenants for the rental unit until September 1, 2015.

As a result, the landlords seek compensation for lost revenue for the months of July and August 2015 in the amount of \$3,200.00.

The landlords also seek compensation in the amount of \$140.00 for weed eating and cutting grass.

Analysis

Based on the landlord's undisputed testimony I find the tenants failed to pay rent for the month of June 2015.

Section 37 of the *Act* states that when a tenant vacates a rental unit at the end of a tenancy the tenant must leave the rental unit reasonably clean, and undamaged except for reasonable wear and tear and give the landlord all the keys or other means of access that are in the possession or control of the tenant and that allow access to and within the residential property.

Based on the landlord's undisputed testimony I find the tenants failed to cut the grass and complete the weeding as required by the tenancy agreement. As a result, I also find the landlord has suffered a loss of \$140.00 to cut the grass and complete the weeding.

Section 45(2) stipulates that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy on a date is not earlier than one month after the date the landlord receives the notice; is not earlier than the date specified in the tenancy agreement as the end of the tenancy; and is the day before the day in the month that rent is payable under the tenancy agreement.

Section 45(3) states that if the landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

A material term of a tenancy agreement is a term that is agreed by both parties is so important that the most trivial breach of that term gives the other party the right to end the tenancy, such as the payment of rent.

Based on the landlord's undisputed testimony the tenant's provided no reason to end the tenancy prior to the end of the fixed term. As such, I find the tenants were responsible for the payment of rent on the rental unit until the end of the fixed term (November 30, 2015) subject only to the landlords' obligation to mitigate their losses.

I find the landlords took reasonable steps to mitigate the losses of revenue and as result, the landlords were able to reduce his claim from \$8,000.00 to \$3,200.00 for lost revenue because the landlords were able to re-rent the unit prior to the end of the fixed term.

Conclusion

I find the landlords are entitled to monetary compensation pursuant to Section 67 in the amount of **\$5,040.00** comprised of \$1,600.00 rent owed; \$3,200.00 lost revenue; \$140.00 yard work and the \$100.00 fee paid by the landlord for this application.

I order the landlords may deduct the security deposit and pet damage deposit held in the amount of \$1,600.00 in partial satisfaction of this claim. I grant a monetary order in the amount of **\$3,440.00**. This order must be served on the tenants. If the tenants fail to comply with this order the landlords may file the order in the Provincial Court (Small Claims) and be 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: December 07, 2015

Residential Tenancy Branch

