



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order pursuant to section 67;

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to be heard, to present evidence and to make submissions. The tenant acknowledged receipt of the landlord's application for dispute resolution and evidence package. The landlord stated the evidence package was uploaded with their online application but the evidence package was not available on file. The parties agreed to proceed with the hearing.

Issues

Is the landlord entitled to a monetary award?

Background & Evidence

The tenancy began on September 15, 2015 and was for a fixed term of one year until September 14, 2016. The monthly rent was \$2465.00 plus \$15.00 for storage and \$125.00 for parking. The tenants paid a security deposit of \$1232.50 at the start of the tenancy which the landlord continues to retain.

By way of a letter attached to an e-mail on March 3, 2016, the tenants advised the landlord they would be ending the tenancy early on April 30, 2016 alleging various material breaches of the tenancy agreement. On March 28, 2016 the tenants sent another e-mail stating they would be ending the tenancy even earlier on March 31, 2016. The tenants vacated the rental unit on March 31, 2016.

The landlord is claiming loss of rent for the month of April 2016 in the amount of \$2605.00 which includes the monthly storage and parking fee. As the landlord only had three days' notice they were unable to re-rent the unit for April 1, 2016. The landlord

disputes that there was any breach of a material term and submits that the tenant did not properly notify the landlord of the alleged breach.

The tenants argue that they had many ongoing concerns with the rental unit during the tenancy. The tenants acknowledge they did not make any formal complaints with the tenancy branch but state they did post concerns on an app provided by the landlord for that purpose.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy agreement.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

Residential Tenancy Policy Guideline #8, Unconscionable and Material Terms, provides the following guidance:

In order to end a tenancy for a breach of a material term, the party alleging the breach must inform the other party in writing of the following:

- that there is a problem;
- that they believe the problem is a breach of a material term of the tenancy agreement;
- that the problem must be fixed by a deadline included in the letter, and that the deadline be reasonable; and
- that if the problem is not fixed by the deadline, the party will end the tenancy.

I find the tenants have failed to establish that the tenancy was ended due to a material breach of the tenancy agreement; failed to provide the landlord with a reasonable opportunity to correct the alleged breach; and failed to notify the landlord that they would end the tenancy if the problem was not fixed by the stated deadline.

I accept the landlord's claim for loss in the amount of \$2605.00. Although the landlord's application does not seek to retain the security deposit, using the offsetting provisions of section 72 of the Act, I allow the landlord to retain the security deposit in partial satisfaction of the monetary award.

The landlord is entitled to a monetary order in the amount of \$1,372.50.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$1,372.50**. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial 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: October 27, 2016

Residential Tenancy Branch