



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord on June 27, 2016 for a Monetary Order for: damage to the rental unit; for unpaid rent; for money owed or compensation for damage or loss under the *Residential Tenancy Act* (the “Act”), regulation or tenancy agreement; to keep the Tenants’ security and pet damage deposits; and, to recover the filing fee from the Tenants.

An agent for the Landlord, who was also the property manager, appeared for the hearing and provided affirmed testimony. The Landlord’s agent also provided documentary and photographic evidence prior to the hearing. There was no appearance for the Tenant during the 60 minute hearing or any submission of written evidence prior to the hearing. Therefore, I turned my mind to the service of documents by the Landlord.

The Landlord’s agent testified that he served each Tenant individually with a copy of the Application and the Notice of Hearing documents by registered mail on June 29, 2016. The Landlord provided the Canada Post tracking numbers into oral evidence to verify this method of service. These are documented on the front page of this Decision. However, the documents were returned back to him. Section 90(a) of the Act provides that a document is deemed to have been received five days after it is mailed. A party cannot avoid service through a failure or neglect to pick up mail. As a result, based on the undisputed evidence of the Landlord, I find that the Tenants were deemed served with the required documents on July 4, 2016 pursuant to the Act.

Issue(s) to be Decided

- Is the Landlord entitled to unpaid rent and the costs associated with breakage of the fixed term tenancy?
- Is the Landlord entitled to the costs to clean the rental unit?

- Is the Landlord entitled to keep the Tenants' security and pet damage deposits?

Background and Evidence

The Landlord's agent testified that this tenancy started on August 15, 2013. The tenancy agreement was provide into evidence and shows that the term was fixed term for one year and due to end on August 31, 2014. Rent under the agreement was payable in the amount of \$2,200.00 on the first day of each month.

The Tenants paid \$1,100.00 as a security deposit and \$1,100.00 as a pet damage deposit (herein referred to as the "Deposits"), which the Landlord still retains. The Landlord completed a move-in Condition Inspection Report (the "CIR") on August 14, 2013.

The Landlord testified that the Tenants failed to pay rent for May, June and July 2016. The Landlord's agent testified that the Tenants abandoned the rental unit in the first week of July 2014 without providing any notice and a forwarding address. The Landlord's agent testified that the Tenants had initiated a dispute resolution hearing prior to the ending of the tenancy in which they unsuccessfully attempted to get out of the fixed term tenancy by claiming that it was frustrated.

The Landlord's agent stated that after the Tenants abandoned the rental unit, they failed to clean the rental unit and remove a large amount of debris which the Landlord documented in the move-out CIR provided as evidence for this hearing. As a result, the Landlord had to hire a professional clearing company to clean the rental unit and remove the debris for a cost of \$900.00. The Landlord provided photographic evidence to show the state of the rental unit which was left by the Tenants and a copy of the invoices for the charges incurred for the cleanup.

The Landlord's agent stated that the rental unit could not be rented for July 2014 as the Tenants had not provided any prior written notice and had left it in a state that required it to be cleaned. The Landlord's agent then referred to a number of advertisements he placed to re-rent the unit for August 2014 which he was unable to do. However, he was able to re-rent it for September 2014.

As a result, the Landlord now seeks to claim unpaid rent for May, June and July 2014 as well as loss of rent for August 2014 in the amount of \$8,800.00. The Landlord also seeks to recover the \$900.00 he paid to the cleaning company to clean the rental unit and remove the Tenants' junk and personal property as evidenced by the photographs.

Analysis

Section 26(1) of the Act states that a tenant is required to pay rent when it is due under the tenancy agreement irrespective of whether a landlord complies with the Act. In addition, fixed term tenancies cannot be breached without authority by a landlord and tenant and are designed to provide both parties security and permanency for the agreed fixed time period.

In this case, I accept the undisputed evidence of the Landlord's agent that the Tenants failed to pay rent for the months of May, June and July 2014. When a tenant breaks a fixed term tenancy, the landlord must take reasonable steps to mitigate loss as required by Section 7(2) of the Act. In this case, I find the Landlord took reasonable steps by placing advertisements to re-rent out the rental unit to mitigate the loss. Therefore, I award the Landlord loss of rent for August 2014 which the Landlord was unable to mitigate.

Section 37(2) of the Act requires a tenant to leave a rental unit reasonably clean and undamaged at the end of a tenancy. In addition, Section 21 of the *Residential Tenancy Regulation* allows a CIR to be considered as evidence of the state of repair and condition of the rental unit, unless a party has a preponderance of evidence to the contrary.

Based on the foregoing, I accept the Landlord's undisputed evidence that the Tenants failed to comply with Section 37(2) of the Act in leaving the rental unit clean. I find the Tenants have not provided a preponderance of evidence to dispute the Landlord's evidence in this respect. Therefore, I award the cleanup costs of \$900.00 which were suffered by the Landlord.

Therefore, the total amount awarded to the Landlord is \$9,700.00. As the Landlord has been successful in this matter, the Landlord is also entitled to the \$100.00 filing fee for the cost of making the Application, pursuant to Section 72(1) of the Act. Therefore, the total amount awarded to the Landlord is \$9,800.00.

As the Landlord already holds \$2,200.00 in the Tenants' Deposits, I order the Landlord to retain this amount in partial satisfaction of the claim awarded, pursuant to Section 72(2) (b) of the Act. As a result, the Landlord is awarded the outstanding balance of \$7,600.00.

Conclusion

The Tenant has breached the Act by not paying rent and causing damage to the rental unit. Therefore, the Landlord may keep the Tenants' Deposits and I grant the Landlord a Monetary Order for the remaining balance of \$7,600.00.

Copies of this order are attached to the Landlord's copy of this Decision. This order must be served on the Tenants and may then be filed in the Small Claims Division of the Provincial Court and enforced as an order of that court. The Tenants may also be liable for the enforcement costs of 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: October 19, 2016

Residential Tenancy Branch

