



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities, for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenants for the cost of the application.

The landlord attended the hearing on the first day scheduled, but was not able to prove service on each tenant. The hearing was adjourned, and y Interim Decision was provided to the landlord, which ordered the landlord to serve the tenants individually within 3 days of receipt of the Interim Decision with a copy of the Landlord's Application for Dispute Resolution, a copy of the Interim Decision, Notice of Reconvened Hearing and all evidence that the landlord intends to rely on at the hearing.

The landlord attended the hearing on the second scheduled date, however the line remained open while the phone system was monitored for 10 minutes prior to hearing any testimony and no one for the tenants attended the call. The landlord testified that the tenants were each served with the documents ordered in my Interim Decision by registered mail on October 24, 2016 and orally provided tracking numbers assigned by Canada Post. The landlord was permitted to provide by facsimile proof of such service after the hearing concluded. I have now received copies of 2 Registered Domestic Customer Receipts addressed to each of the tenants named in the landlord's application, and I am satisfied that the tenants have been served in accordance with the *Residential Tenancy Act*.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent or utilities?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the landlord's claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on December 1, 2015, but is not sure of the date the tenants moved out of the rental unit. However, the tenants moved in earlier than the date specified in the written agreement for a partial month's rent. Rent in the amount of \$700.00 per month was payable on the 1st day of each month, but the parties orally agreed that it would be paid the day before. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$350.00, which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is a basement suite and the landlord resides in the upper unit. A copy of the tenancy agreement has been provided.

The landlord further testified that the tenants failed to pay the last month of rent, and owe \$700.00 to the landlord for April. The landlord has also provided a copy of a 10 Day Notice to End Tenancy for Unpaid Rent or Utilities which states that the tenants failed to pay \$232.00 rent that was due on January 1, 2016. The date that it was issued is not visible, however it also states that the tenants also failed to pay utilities in the amount of \$24.00 following written demand on January 1, 2016.

The landlord has also provided a letter from the tenants dated February 23, 2016 which states that the tenants will be moving out the rental unit on April 1, 2016 and the letter contains the tenants' forwarding address. It also has written on it, "Feb 23, 2016 delivered on front door." Also provided is a letter from the tenants dated March 1, 2016 confirming the move-out date of April 1 and requesting return of the security deposit. Both letters have the same forwarding address of the tenants.

The rental unit was re-rented for October 1, 2016.

The landlord claims \$232.00 for November's partial month's rent but has provided a worksheet setting out a claim of \$256.00. The landlord also claims \$60.00 for the tenants using additional storage space; \$149.00 for a hydro bill for January through March, 2016 and another \$4.00 hydro bill; \$700.00 for April's rent; \$100.00 to clean up the rental unit after the tenants moved out; and recovery of the \$100.00 filing fee.

Also, in the facsimile provided by the landlord after the hearing had concluded, the landlord claims further compensation.

Analysis

Where a party makes a monetary claim against another party, the onus is on the claiming party to establish the exact claim.

The landlord was not able to testify as to when the tenants actually moved into the rental unit. A landlord may be entitled to a proportionate amount, but must be able to specify the date. I have reviewed the landlord's evidentiary material, and find discrepancies about the amount of rent the landlord claims or may be entitled to for November, 2015. The notice to end tenancy and the landlord's testimony and the landlord's monetary worksheet do not match, and without an actual date, I am not satisfied that the landlord has established a claim for a partial month of rent for November, 2015.

The landlord also testified that the tenants didn't pay the last month of rent, and is claiming April's rent of \$700.00. The landlord's evidentiary material also contains notice from the tenants to vacate the rental unit effective April 1, 2016, and I don't understand, considering the notice of the tenants is dated February 23, 2016 why the landlord would feel an entitlement to rent for a period after the tenants vacated. Nor is there any evidence of what the landlord did to re-rent the rental unit once receiving the tenants' notice. Therefore, any entitlement for loss of rental revenue due to the tenants vacating on April 1, 2016 rather than March 31, 2016, has not been mitigated by the landlord attempting to re-rent the rental unit sooner.

The landlord has not provided any utility bills, and the 10 Day Notice to End Tenancy for Unpaid Rent or Utilities specifies \$24.00 following a written demand made on January 1, 2016. I have no idea in the evidence or testimony before me whether or not the tenants may have paid any amount since January 1, 2016 or what the bills amounted to. There is no evidence before me to establish the claim.

The landlord also claims \$100.00 to clean up after the tenants moved out, but there is no evidence before me that the tenants didn't leave the rental unit reasonably clean at the end of the tenancy.

In the evidence and considering the landlord's testimony, I am not satisfied that the landlord has established any of the claims, and I dismiss the landlord's application in its entirety without leave to reapply.

The landlord still holds a security deposit in trust on behalf of the tenants in the amount of \$350.00. I order the landlord to return the tenants' security deposit in full within 15 days of the date of this Decision.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed in its entirety without leave to reapply.

I hereby order the landlord to return to the tenants the \$350.00 security deposit within 15 days of the date of this Decision.

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: November 10, 2016

Residential Tenancy Branch