



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FF

Introduction

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

- a monetary order for unpaid rent and for damage to the unit pursuant to section 67;
- authorization to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested pursuant to section 38; and
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

Tenant MM, tenant AG (collectively the "tenants") and landlord RL (the "landlord") attended the hearing. Tenant KM and landlord HL did not attend the hearing. The tenants confirmed that they had authority to represent tenant KM and the landlord confirmed he had authority to represent landlord HL as an agent at this hearing. The parties were given a full opportunity to be heard, to present affirmed testimony, to make submissions and to call witnesses.

The tenants confirmed receipt of the landlords' application for dispute resolution. In accordance with sections 89 and 90 of the *Act*, I find that the tenants were duly served with the landlords' application.

Preliminary Issue – Excluded Advertisements in Landlord Evidence

The landlord provided a 60 page evidence package containing photographs, email correspondence between the parties, 48 pages of advertisements, and copies of the tenancy agreements to the Residential Tenancy Branch. The landlord testified that he did not send this package to the tenants however he testified that the tenants were in possession of everything in the evidence package with the exception of the 48 pages of advertisements.

The tenants confirmed they were in possession of all but the advertisements. Because the tenants did not receive the 48 pages of advertisements, I have not relied on the advertisements to form any part of my decision.

The landlord confirmed receipt of the tenants' evidence package in the form of a USB flash drive.

Issue(s) to be Decided

Are the landlords entitled to a monetary order for unpaid rent and for damage to the unit?

Are the landlords authorized to retain all or a portion of the tenants' security deposit in partial satisfaction of the monetary order requested?

Are the landlords authorized to recover the filing fee for this application from the tenants?

Background and Evidence

As per the submitted tenancy agreement and testimony of the parties, the tenancy began on September 1, 2015 on a fixed term until August 31, 2016. Rent in the amount of \$1,950.00 was payable on the first of each month. The tenants remitted a security deposit in the amount of \$1,000.00 at the start of the tenancy.

The tenants provided written notice to the landlord on April 21, 2016 that they would vacate the rental unit by May 31, 2016. The written email outlines what they consider unresolved deficiencies within the rental unit. The tenants vacated the rental unit on May 31, 2016 without the landlord's agreement.

At the end of the tenancy the tenants agreed in writing that the landlord could retain all of the security deposit to pay for damage sustained to the kitchen counter top.

The landlord testified that he did not agree to end the fixed term early and therefore seeks compensation for lost rent. The landlord testified that he advertised but did not secure a new tenancy until July 1, 2016; therefore he seeks to recover \$1,950.00 for June rent.

The landlord testified that the replacement cost of the kitchen counter exceeded the damage deposit. Specifically, the landlord testified the kitchen counter cost \$1,087.00 to replace and seeks to recover the \$87.00 from the tenants.

The landlord is also seeking to recover the \$100.00 filing fee for this application from the tenants.

Analysis

Based on the testimony of the parties and submitted tenancy agreement, the parties had a fixed term tenancy that was scheduled to end on August 31, 2016. Although the tenants provided written notice of their intent to end the tenancy on May 31, 2016, they attempted to end the tenancy earlier than the date specified in the fixed term tenancy agreement, which is not in compliance with section 45 of the *Act*.

Pursuant to the *Residential Tenancy Policy Guideline, 30: Fixed Term Tenancies* ("Guideline 30"), neither a landlord nor a tenant can end a fixed term tenancy unless for cause or by written agreement of both parties. The parties in this case did not mutually agree to end the fixed term tenancy. Instead the tenants' indirectly alleged cause by listing the deficiencies in their email to vacate dated April 21, 2016. A tenant ending a fixed term tenancy for cause is required to provide proper written notice of breach of a material term to the landlord. Notice must include a deadline the breach must be repaired by and notification the party will end the tenancy if the breach is not rectified by the deadline. I find this email does not meet the above requirements of proper notice of a breach of a material term of the tenancy agreement and therefore find the tenants did not end this tenancy in accordance with the *Act*.

Pursuant to the *Residential Tenancy Policy Guideline, 5: Duty to Minimize Loss* ("Guideline 5"), when a tenant ends the tenancy agreement contrary to the provisions of the *Act*, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit. Based on the landlord's testimony I find the landlord mitigated his loss by advertising the unit promptly and securing a tenancy for July 1, 2016. Therefore I find that the landlord is entitled to \$1,950.00 for June rent.

In respect to a monetary claim for damages or for a monetary loss to be successful an applicant must satisfy the test prescribed by Section 7 of the *Act*. The applicant must

prove a loss actually exists and prove the loss happened solely because of the actions of the respondent in violation to the *Act*. The applicant must also verify the loss with receipts and the applicant must show how they mitigated or what reasonable efforts they made to minimize the claimed loss.

In this situation, the landlord has provided insufficient evidence to substantiate the actual cost of the counter replacement. The landlord has provided email estimates and no copy of an actual invoice or receipt has been submitted. For this reason, I dismiss this portion of the landlord's claim for compensation in the amount of \$87.00 for counter replacement.

In relation to the security deposit, I find the tenants waived their right to the return of the \$1,000.00 security deposit through written authorization pursuant to section 38 of the *Act* and therefore find the landlord is entitled to retain the \$1,000.00 security deposit.

As the landlord was successful in this application, I find that the landlord is entitled to recover the \$100.00 filing fee paid for the application, for a total award of \$2,050.00.

Conclusion

I issue a monetary order in the landlord's favour in the amount of \$2,050.00 against the tenants.

I dismiss the landlord's application for damages in relation to the counter without leave to reapply.

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 21, 2016

Residential Tenancy Branch