



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding REMAX LITTLE OAK REALTY
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the landlord's Application for Dispute Resolution ("application") under the *Residential Tenancy Act* ("Act") for a monetary order for unpaid rent or utilities, to retain the tenants' security deposit, and to recover the cost of the filing fee.

An agent for the landlord ("agent") attended the teleconference hearing and gave affirmed testimony. During the hearing the agent was given the opportunity to provide their evidence orally. A summary of the evidence is provided below and includes only that which is relevant to the hearing.

As the tenants did not attend the teleconference hearing, service of the Notice of a Dispute Resolution Hearing ("Notice of Hearing"), application, and documentary evidence were considered. The agent testified that the Notice of Hearing, application and documentary evidence were served on the tenants by registered mail on July 19, 2017, comprised of one package addressed to each tenant at their forwarding address provided on the outgoing condition inspection report. Two registered mail tracking numbers were submitted in evidence, and have been included on the cover page of this decision for ease of reference. According to the online registered mail tracking website, both registered mail packages were signed for and accepted by the tenants on July 20, 2017. Based on the above, I find the tenants were successful served as of July 20, 2017 which is the date the registered mail packages were signed for and delivered to the tenants.

Preliminary and Procedural Matter

The agent provided his email address at the outset of the hearing which was confirmed by the undersigned arbitrator. The agent was advised that the decision would be emailed to the agent and sent by regular mail to the tenants and that any applicable orders would be emailed to the appropriate party.

Issues to be Decided

- Is the landlord entitled to a monetary order under the *Act*, and if so, in what amount?
- What should happen to the tenants' security deposit under the *Act*?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed term tenancy began on August 15, 2016 and after six months reverted to a month to month tenancy. Monthly rent in the amount of \$2,100.00 was due on the first day of each month. The tenants paid a security deposit of \$1,050.00 at the start of the tenancy, which the landlord continues to hold.

The agent testified that the landlord is only seeking \$1,050.00 for loss of July 2017 rent even though the landlord lost \$2,100.00 for July 2017 rent due to the tenants providing late notice and in a method not provided for under the *Act*. The agent testified that the tenants' email dated May 25, 2017 was not received by the landlord until June 5, 2017 and that the tenants never wrote a notice to end the tenancy other than by email. The agent stated that while the tenants paid rent for June 2017, and that the agent began to advertise the rental unit before the end of June, new tenants did not move into the rental unit until August 2017 and as a result the landlord suffered a loss of \$2,100.00 in rent for July 2017 due to the tenants' late notice to end the tenancy.

The agent referred to emails, the tenancy agreement and registered mail documents submitted in evidence.

Analysis

Based on the undisputed documentary evidence of the landlord and the undisputed testimony of the agent provided during the hearing, and on the balance of probabilities, I find the following.

As the tenants were found to be served with the Notice of Hearing, application and documentary evidence as of July 20, 2017 and did not attend the hearing, I consider this matter to be unopposed by the tenants. As a result, and taking into account the undisputed testimony and documentary evidence before me, I find the landlord's application is fully successful in the amount of **\$1,050.00** for loss of July 2017 rent and that the landlord has complied with section 7 of the *Act* by minimizing their loss by securing new tenants effective August 2017. I find the tenants breached section 26 of the *Act* which requires tenants to pay rent on the date that it is due in accordance with the tenancy agreement. Also, I find the tenants breached section 45(1) of the *Act* as the tenants were not entitled to end the month to month tenancy earlier than July 31, 2017, as rent is due on the first day of each month and the landlord did not receive the email from the tenants until June 5, 2017. I also note that there is no service provision for email currently under the *Act*.

As the landlord's application is successful, I grant the landlord the recovery of the filing fee in the amount of **\$100.00** pursuant to section 72 of the *Act*. Therefore, I find the landlord has established a total monetary claim of **\$1,150.00** comprised of \$1,050.00 in the claimed portion of loss of rent which equals the tenants' security deposit, plus the \$100.00 recovery of the cost of the filing fee.

The landlord continues to hold the tenants' security deposit of \$1,050.00 which has not accrued any interest to date.

I authorize the landlord to retain the tenants' full security deposit of \$1,050.00 in partial satisfaction of the landlord's monetary claim. I grant the landlord a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of **\$100.00**.

Conclusion

The landlord's application is successful.

The landlord has been authorized to retain the tenants' full security deposit of \$1,050.00 in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order pursuant to section 67 of the *Act*, for the balance owing by the tenants to the landlord in the amount of \$100.00 as described above. The landlord must serve the tenants with the monetary order and may enforce the monetary order in the Provincial Court (Small Claims Division).

This decision is final and binding on the parties, unless otherwise provided under the *Act*, and 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: January 11, 2018

Residential Tenancy Branch