



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

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

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony, to present evidence and to make submissions. The tenants acknowledged receipt of the landlord's application for dispute resolution including the evidence on file.

Issues

Is the landlord entitled to a monetary award?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenant?

Background & Evidence

This tenancy was for a one year fixed term beginning on January 1, 2017. All though the tenancy agreement stipulated it was a one year fixed term, the end date on the agreement was recorded as January 31, 2018, rather than December 31, 2017. The monthly rent was \$1000.00 and the tenants paid a security deposit of \$500.00 at the start of the tenancy which the landlord continues to hold. On June 7, 2017, the tenant provided notice to the landlord to end the tenancy early, effective June 30, 2017. The tenants vacated the rental unit on this date.

The landlord made an application for dispute resolution claiming against the security deposit within 15 days of the end of tenancy.

The landlord is claiming the filing fee for this application and registered mail costs for service of documents.

The landlord is claiming \$60.00 in cleaning fees incurred which was not disputed by the tenants.

The landlord is claiming an amount of \$112.50 for time spent in showing the suite to secure new tenants and July rent in the amount of \$1000.00 as they were not able to secure new tenants for this month. The landlord submits they made attempts to re-rent the suite and provided copies of advertisements and e-mails in support. The landlord further testified that the tenants had offered to sublet but the landlord refused the offer as they do not allow sublets.

The tenants submit they requested permission to sublet the rental unit but the landlord refused. The tenants submit the landlord made insufficient attempts to mitigate losses by re-renting the suite. The tenants are requesting their security deposit be returned and double the amount if applicable.

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. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

Pursuant to section 34(2) of the Act, if a fixed term tenancy agreement is for 6 months or more, the landlord must not unreasonably withhold consent required to assign a tenancy agreement or sublet a rental unit.

The landlord was adamant in the hearing that they do not permit subletting of the rental unit. I find this is contrary to the Act as this tenancy agreement was for a fixed term which had more than 6 months remaining on the original term. I find that by refusing permission to allow the tenants to attempt to sublet the rental unit, the landlord unreasonably withheld consent. By doing so, I find the landlord did not fully mitigate any potential losses from being unable to secure new tenants for the month of July

2017. As such the landlord's claim for loss of rent for July 2017 is dismissed without leave to reapply.

As I found the landlord failed to mitigate losses by unreasonable withholding consent to sublet, the landlords claim for costs involved in showing the suite is also dismissed without leave to reapply.

The landlord is awarded \$60.00 for cleaning fees as agreed to by the tenants.

As the landlord was for the most part not successful in this application, I find that the landlord is not entitled to recover the filing fee paid for this application or any costs incurred for serving the application documents.

The landlord continues to hold a security deposit in the amount of \$500.00. The landlord is permitted to retain \$60.00 from this security deposit in full satisfaction of the monetary award and the balance of \$440.00 is to be returned to the tenants forthwith.

The tenants are granted a Monetary Order in the amount of \$440.00.

As the landlord filed an application to claim against the security deposit within 15 days after the end of the tenancy, the tenants are not entitled to double the amount of the security deposit.

Conclusion

Pursuant to section 67 of the *Act*, I grant the tenants a Monetary Order in the amount of \$440.00. Should the landlord 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: January 04, 2018

Residential Tenancy Branch