



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Decision Codes: FF, MNR, MNSD & MNDC

Introduction

The Application for Dispute Resolution filed by the landlord makes the following claims:

- a. A monetary order in the sum of \$6226 for unpaid rent and damages
- b. An order to keep the security deposit.
- c. An order to recover the cost of the filing fee

A hearing was conducted by conference call in the presence of both parties. On the basis of the solemnly affirmed evidence presented at that hearing, a decision has been reached. All of the evidence was carefully considered.

Both parties were given a full opportunity to present evidence and make submissions. Neither party requested an adjournment or a Summons to Testify. Prior to concluding the hearing both parties acknowledged they had presented all of the relevant evidence that they wished to present. The parties acknowledged they had received the documents of the other party.

I find that the Application for Dispute Resolution/Notice of Hearing was served on the Tenants, by mailing, by registered mail to where the Tenants reside on July 12, 2017. With respect to each of the applicant's claims I find as follows:

Issues to be Decided

The issues to be decided are as follows:

- a. Whether the landlord is entitled to a monetary order and if so how much?
- b. Whether the landlord is entitled to retain all or a portion of the security deposit/pet deposit?
- c. Whether the landlord is entitled to recover the cost of the filing fee?

Background and Evidence:

In the summer of 2015 the parties entered into a one year fixed term written tenancy agreement that provided that the tenancy would start on August 4, 2015 and end on July 31, 2016. The tenant was \$3275 per month payable in advance on the first day of each month. The tenants paid a security deposit of \$1637.50.

In the late spring or early summer of 2016 the parties entered into a second one year fixed term tenancy agreement that provided that the tenancy would start on August 1, 2016 and end on

July 31 2017. The tenancy agreement also included a hand written clause that stated Two month notice needed to move out provided not from Oct 2016 to March 2017. The rent was \$3360 per month payable in advance on the first day of each month.

On March 25, 2017 the Tenants gave the landlord written notice they were vacating the rental unit at the end of May 2017. The landlord responded saying the Tenants were responsible to pay for the rent to the end of he fixed term. The tenants disputed this.

The rental unit was vacated on May 27, 2017. The parties had initially scheduled a walk through for May 31, 2017. However, due to the landlord's travel schedule they agreed to meet on May 30, 2017 to inspect the unit. At that time the landlord attended with his agent and HR (tenant) attended with his brother. The parties signed a document that stated the tenant was moving out 2 months early and stated the tenants were to get only \$800 back from the security deposit and the landlord could keep the remainder.

The landlord testified he started to advertise the rental unit for rent in March. He also hired agents to act on his behalf. However, he was not able to rent the rental unit for the month of June 2017. He further testified his inability to rent the rental unit was caused because the tenants failed to sufficiently allow the landlord to show the rental unit. A new tenant was eventually found who took possession on July 1, 2017 with a rent of \$3500 per month.

Landlord's Application - Analysis

The Residential Tenancy Act provides the tenant must maintain reasonable health, cleanliness and sanitary standards throughout the rental unit and the other residential property to which the tenant has access. The tenant must repair damage to the rental unit or common areas that is caused by the actions or neglect of the tenant or a person permitted on the residential property by the tenant and is liable to compensate the landlord for failure to do so. In some instances the landlord's standards may be higher than what is required by the Act. The tenant is required to maintain the standards set out in the Act. The tenant is not required to make repairs for reasonable wear and tear. The applicant has the burden of proof to establish the claim on the evidence presented at the hearing.

Monetary Order and Cost of Filing fee

All of the evidence was carefully considered. With respect to each of the landlord's claims I find as follows:

- a. I ordered that the landlord's claim for loss rent for June 2017 be dismissed for the following reasons:
 - The second fixed term tenancy agreement had a term in it the allowed the tenants to end the tenancy upon giving 60 days notice. The provision limited the application of this provision such that the tenants could not end the tenancy

during the months of October 2016 to March 2017. The tenants gave the landlord 2 months notice that ended the tenancy at the end of May as they were entitled to do.

- It is not possible to give meaning to the notice provisions and at the same time holding the tenants to be responsible for the remaining 2 months of the fixed term.
 - The landlord's explanation that the 2 month notice was to apply after the end of the fixed term is not consistent with the notice provision.
 - Further, the landlord failed to prove that he was unable to rent the rental unit because the tenants failed to work with the landlord in showing the rental unit. The landlord's agent did not give evidence in the hearing. The evidence show both parties made efforts to show the rental unit.
 - Finally, the landlord failed to present sufficient evidence to establish he has mitigated his loss. The landlord's agent did not provide evidence and it is unclear exactly what efforts the landlord's agent made to re-rent the rental unit.
- b. The parties met and completed a walk through at the end of the tenancy. At that time they signed an agreement where they agreed the tenants would get \$800 of the security deposit back from the landlord and the landlord would be permitted to keep the remainder. I determined this settlement agreement is binding on both parties. The parties failed to provide sufficient evidence to establish why this agreement should not be enforced. The landlord failed to prove the Condition Inspection Report which was part of the landlord's evidence was signed by both parties at the end of the tenancy. The tenants dispute this saying it was a fabrication.

As a result I dismissed the landlord's claim of \$1559.25 based on the invoice from CRD Construction, \$460 from Hamid Handyman and \$485 for replace a gasket and install a new door from Whirlpool Company.

Finally, the landlord failed to provide sufficient evidence to establish that the items that made up these claims were caused by the tenant's conduct.

In summary I determined the landlord has established a monetary claim against the tenant(s) in the sum of \$837.50 as a result of the settlement reached by the parties. I dismissed the landlord's claim for the cost of the filing fee as the tenants were prepared to settle this matter of this basis.

Monetary Order and Security Deposit:

I ordered that the landlord shall retain the sum of \$837.50 from the security deposit. I further ordered that the landlord shall pay to the Tenant the balance of the security deposit in the sum of \$800.

It is further Ordered that this sum be paid forthwith. The applicant is given a formal Order in the above terms and the respondent must be served with a copy of this Order as soon as possible.

Should the respondent fail to comply with this Order, the Order may be filed in the Small Claims division of the Provincial Court and enforced as an Order of that Court.

This decision is final and binding on the parties.

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 14, 2018

Residential Tenancy Branch