



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

Dispute Codes MNR, MNSD & FF

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

- a. A monetary order in the sum of \$2200 for loss of rent.
- b. An order to retain 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.

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 13, 2017. With respect to each of the applicant's claims I find as follows:

Issue(s) 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:

The parties entered into a fixed term written tenancy agreement that provided that the tenancy would start on April 24, 2017 and end on August 31, 2017. The rent was \$2200 per month payable on the first day of each month. The tenant paid a security deposit of \$1100 and a pet damage deposit of \$1100 at the start of the tenancy.

The landlord testified the tenants failed to give proper notice they were ending the tenancy and vacating the property. She testified she has not received written notice.

The tenants testified the tenants gave oral notice they were vacating the rental unit 4 days prior to the end of June. They vacated at the end of June. The landlord immediately attempted to re-rent the rental unit. A new tenant was found who moved in on July 15, 2017. The landlord is claiming ½ month rent or the sum of \$1100.

The tenant testified they complained about the spraying of pesticides on the rental property with pesticides. The rental property is located near a farm. They further testified the applicant's son (who is the owner of the property and who lives out of the country) advised them by e-mail they could vacate if they wished. They further testified they accepted the offer and advised the landlord they were leaving about 2 ½ weeks prior to the end of June.

The tenants failed to provide evidence in the form of documents, e-mail or digital evidence.

Analysis - Monetary Order and Cost of Filing fee:

After carefully considering all of the evidence I determined the tenant failed to prove that they have ended the tenancy in a manner that is permitted by the Residential Tenancy Act. The relevant provisions of section 44 of the Residential Tenancy Act provides as follows:

How a tenancy ends

44 (1) A tenancy ends only if one or more of the following applies:

(a) the tenant or landlord gives notice to end the tenancy in accordance with one of the following:

(i) section 45 [*tenant's notice*];

...

(c) the landlord and tenant agree in writing to end the tenancy;

(2) [Repealed 2003-81-37.]

Tenant's notice

45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(2) A tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice,

(b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and

(c) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

(3) If a landlord has failed to comply with a material term of the tenancy agreement and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy effective on a date that is after the date the landlord receives the notice.

(4) A notice to end a tenancy given under this section must comply with section 52 [*form and content of notice to end tenancy*].

Section 52 provides as follows:

Form and content of notice to end tenancy

52 In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy,
 - (d.1) for a notice under section 45.1 [*tenant's notice: family violence or long-term care*], be accompanied by a statement made in accordance with section 45.2 [*confirmation of eligibility*], and
- (e) when given by a landlord, be in the approved form.

The tenants failed to provide that they gave written notice as required under section 44, 45 and 52 of the Residential Tenancy Act. Further they failed to provide there was a mutual agreement in writing to end the tenancy. The tenants failed to provide sufficient evidence of a mutual agreement in writing.

As a result I determined the tenants breached the tenancy agreement and they are liable to pay the rent for the remainder of the unexpired remainder of the fixed term tenancy agreement subject to the landlord's obligation to mitigate their loss. The landlord was able to mitigate their loss to ½ months rent as they found a new tenant to move into the rental unit on July 15, 2017. I determined the landlord is entitled to the sum of \$1100 plus \$100 for the cost of the filing fee for a total of \$1200.

Security Deposit:

Section 72(2) of the Residential Tenancy Act provides as follows:

Director's orders: fees and monetary orders

- 72** (2) If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted
- (a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and
 - (b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

I determined the security deposit and pet damage deposit totals the sum of \$2200. I ordered the landlord may retain the sum of \$1200 from the security deposit and pet damage deposit. I ordered that the landlord return the balance of the security deposit/pet damage deposit in the sum of \$1000 to the Tenants.

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

Should the applicant 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 09, 2018

Residential Tenancy Branch