

Dispute Resolution Services

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Residential Tenancy Branch Office of Housing and Construction Standards

DECISION

Dispute Codes

Landlord's application: MNRLS FFL

Tenants' application: MNSD FFT

<u>Introduction</u>

This hearing was convened as a result of the Applications for Dispute Resolution ("applications") by the landlord and tenants seeking remedy under the *Residential Tenancy Act* ("*Act*"). The landlord applied for unpaid rent or utilities, to retain all or part of the tenants' security deposit, and to recover the cost of the filing fee. The tenants applied for the return of double their security deposit under the *Act* and to recover the cost of the filing fee.

The landlord and the tenants attended the teleconference hearing and gave affirmed testimony. The parties were given the opportunity to ask questions about the hearing process. A summary of the testimony and documentary evidence presented is provided below and includes only that which is relevant to the matters before me.

Both parties confirmed having received documentary evidence from the other party and that they had the opportunity to review that evidence. As a result, I find the parties were sufficiently served.

Preliminary and Procedural Matter

The parties confirmed their respective email addresses at the outset of the hearing. The parties confirmed their understanding that the decision would be emailed to both parties and that any applicable orders would be emailed to the appropriate party.

<u>Issues to be Decided</u>

- Is either party 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?
- Is either party entitled to the recovery of the cost of the filing fee under the Act?

Background and Evidence

A copy of the tenancy agreement was submitted in evidence. A fixed-term tenancy began on September 3, 2017 and was scheduled to revert to a month to month tenancy after August 31, 2018. The tenants admitted during the hearing that after signing the tenancy agreement later that evening on September 3, 2017 they found a different rental unit that better suited them so they signed a second tenancy agreement simultaneously for a different rental unit and with a different landlord. The landlord testified that the tenants attended in person on September 4, 2017 to ask the landlord to sign a document the tenants prepared as authorization to release the tenants from their fixed term tenancy. The landlord testified that he did not agree to sign the document prepared by the tenants. The landlord vehemently disagreed that he released the tenants from the fixed term tenancy.

The parties agreed that the tenants paid a security deposit of \$800.00 and the first month of rent of \$1,600.00 for September 2018.

Although the landlord has applied for \$1,600.00 in compensation and neglected to amend his application correctly in accordance with the Rules of Procedure, the landlord did provide a monetary order worksheet that indicated that he was seeking \$7,200.00 in unpaid rent and loss of rent from the tenants.

The tenants admitted that they did not formally give the landlord written notice that they were not intending to occupy the rental unit or were providing their written notice to end the tenancy. The landlord confirmed that he has not received a written notice to end the tenancy from the tenants.

The landlord testified that he began to advertise the rental unit on September 4, 2017 however instead of advertising the rental unit for \$1,600.00 he made the decision to advertise the rental unit at \$1,875.00 per month. The landlord also confirmed that on October 10, 2017 he lowered the advertised monthly rent to \$1,775.00 and it took four and a half months before new tenants occupied the rental unit. As a result, the landlord is seeking a total amount of \$7,200.00 for 4.5 months of unpaid rent/loss of rent.

The tenants submitted a document dated September 30, 2017 with their forwarding address however failed to provide any supporting documentation to support how it was served such as a proof of service document. The landlord applied on October 18, 2017 against the tenants' security deposit.

<u>Analysis</u>

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

Firstly, section 16 of the Act applies and states:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

[My emphasis added]

Based on the above, I find the parties started a legal tenancy agreement as a security deposit was paid as was the first month's rent. Secondly, I find that the fact the tenants did not occupy the rental unit to be moot as the tenancy began regardless of the tenants ever occupying the rental unit as per section 16 of the *Act*.

In addition to the above, section 45(2) of the *Act* applies and states:

Tenant's notice

- **45** (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.

[My emphasis added]

Based on the evidence before me, I find the tenants could not end the fixed term earlier than August 31, 2018 based on the fixed term tenancy agreement they signed while taking into account that there is insufficient evidence before me that the landlord did not agree in writing to end the tenancy at an earlier date. Furthermore, the landlord specifically denied that he agreed to end the tenancy earlier for the tenants.

As the landlord confirmed that he made the decision to advertise the rental unit for \$1,875.00 for September 2017 which is \$275.00 more than the \$1,600.00 monthly rent agreed upon by the parties in the tenancy agreement, I find the landlord failed to comply with section 7 of the *Act* which applies and states:

Liability for not complying with this Act or a tenancy agreement

- 7 (1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.
 - (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement <u>must do whatever is reasonable to minimize the damage or loss.</u>

[My emphasis added]

I find that the actions of the landlord to increase the advertised rent in September 2017 by \$275.00 to be unreasonable and is the opposite of a reasonable attempt to minimize his loss which section 7 of the *Act* requires the landlord to do. In reaching this finding I have considered that the landlord only decreased the advertised rent on October 14, 2017 to \$1,775.00 which is still \$175.00 higher than the original rent. The landlord argued that he gave the tenants a lower amount of rent however I find that is not supported by the fact that it took 4.5 months to secure new tenants when the landlord attempted to increase the rent by advertising in September 2017 the amount of \$1,875.00 per month.

Given the above, I grant the landlord the loss of October 2017 rent in the amount of **\$1,600.00** as I find that based on the tenant's failing to provide written notice that it would be difficult for the landlord to secure a new tenant for October 2017 when the landlord was only made aware of the tenants not moving in after the month of September had already begun. I dismiss the remainder of the landlord's application for additional loss of rent due to insufficient evidence without leave to reapply.

As the landlord's application was partially successful, I grant the landlord **\$100.00** pursuant to section 72 of the *Act* for the recovery of the cost of the filing fee.

I find that the landlord has established a total monetary claim in the amount of **\$1,700.00** comprised of \$1,600.00 for loss of October 2017 rent, plus the recovery of the cost of the filing fee.

I dismiss the tenants' application in full due to insufficient evidence without leave to reapply. I note that the tenants confirmed that they failed to advise the landlord in writing that they were not moving into the rental unit.

As the landlord has claimed against the tenants' security deposit of \$800.00 which has accrued no interest to date and pursuant to section 72 of the *Act*, I authorize the landlord to retain the tenants' full \$800.00 security deposit in partial satisfaction of the landlords' monetary claim. I grant the landlord a monetary order for the balance owing by the tenants to the landlord under section 67 of the *Act* in the amount of **\$900.00**.

I caution the tenants not to breach section 45(2) of the *Act* in the future.

I caution the landlord not to breach section 7 of the *Act* in the future.

Conclusion

The tenants' application is dismissed in full without leave to reapply due to insufficient evidence.

The landlord's application is partially successful. The landlord has established a total monetary claim in the amount of \$1,700.00. The landlord has been authorized to retain the tenants' full \$800.00 security deposit in partial satisfaction of the landlord's monetary claim. The landlord has been granted a monetary order for the balance owing by the tenants to the landlord under section 67 of the *Act* in the amount of \$900.00. This order must be served on the tenants and may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

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: May 25, 2018

Residential Tenancy Branch