



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for loss of rent, unpaid utilities; and, authorization to retain the security deposit. The tenant did not appear at the hearing. The landlords testified that they sent the hearing documents and evidence to the tenant via registered mail using the forwarding address she provided to them via registered mail. The registered mail was successfully delivered to the tenant at her forwarding address on November 10, 2017. The landlord's orally provided the registered mail tracking number as proof of service and a search of the tracking number confirmed delivery of the registered mail package. I was satisfied the tenant was duly served with notification of this proceeding and I continued to hear from the landlords without the tenant present.

Issue(s) to be Decided

1. Have the landlords established an entitlement to compensation from the tenant in the amounts claimed?
2. Are the landlords authorized to retain the tenant's security deposit?

Background and Evidence

The one year fixed term tenancy started on May 1, 2017. The tenant paid a security deposit of \$300.00 and was required to pay rent of \$600.00 on the first day of every month. In addition, the tenant was required to pay for heat and hydro. The Addendum to the tenancy agreement provides that the tenant would pay \$160.00 per month to the landlord for heat and hydro and the charge would be reviewed and adjusted every six months based on the billings.

The tenant gave the landlords a notice to end tenancy on September 25, 2017 indicating she would be ending the tenancy at the end of October 2017. The landlords reminded the tenant that she was in a lease and that she would be responsible for rent for the remainder of the fixed term. The tenant paid rent for the month of October 2017. On October 25, 2017 the landlords found the keys to the rental unit in the mailbox and the rental unit vacated.

The landlords submitted that they requested the tenant to participate in the move-out inspection but she did not. The landlord performed the move-out inspection and completed the move-out inspection report without the tenant on October 31, 2017.

When the landlord's prepared and filed their Application for Dispute Resolution in the latter part of October 2017 the landlords requested compensation of \$600.00 per month for rent and \$160.00 per month for utilities for the seven months remaining in the tenancy, plus \$300.00 retention of the security deposit. During the hearing, the landlords testified that they re-rented the unit effective November 1, 2017 for the same amount of rent and utilities that the tenant was paying. The landlords confirmed that they did not suffer a loss with respect to rent and utilities; however, they were of the belief that they may still be entitled to collect rent and utilities from the tenant for the remainder of the fixed term since the tenant breached the fixed term tenancy agreement.

The landlords also clarified that they wish to retain the security deposit because the tenant did not participate in the move-out inspection despite being asked to do so and there was some cleaning that needed to be done to the unit, including the removal of a smoke smell with an ozonater, and some damage to the rental unit. The landlords requested retention of the security deposit in satisfaction of such losses. The landlords provided the move-in and move-out inspection report; photographs, and receipts to demonstrate losses with respect to cleaning and damage. The landlords acknowledged that some repairs have yet to be made due to financial constraints, but that they will be made at some point.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim. The burden of proof is based on the balance of probabilities. Awards for compensation are provided in section 7 and 67 of the Act. Accordingly, an applicant must prove the following:

1. That the other party violated the Act, regulations, or tenancy agreement;
2. That the violation caused the party making the application to incur damages or loss as a result of the violation;
3. The value of the loss; and,
4. That the party making the application did whatever was reasonable to minimize the damage or loss.

With respect to the landlord's claim for rent and utilities, I find the landlords are not entitled to collect such rent and utilities from the tenant for the remainder of the fixed term because they did not suffer a loss of rent and utilities as a result of the tenant ending the tenancy early. Although the tenant breached the tenancy agreement by ending the tenancy early, in order to succeed in a monetary claim the applicant must also demonstrate that a loss was suffered as a result of the breach. Since the landlords re-rented the unit for the same amount of rent and

utilities without suffering a vacancy, I find there is no loss of rent or utilities and I deny the landlord's claim for rent and utilities against the tenant.

As for the security deposit, the landlords submitted that the tenant did not participate in the move-out inspection despite being invited to do so and I accept their unopposed submission. Where a tenant does not participate in a scheduled inspection at the start or end of the tenancy the tenant extinguishes their right to return of the security deposit as provided under section 36(1) of the Act. Further, it would appear the landlords have suffered losses with respect to cleaning and repairs required at the end of the tenancy. The receipt for the ozonator shows that its use cost the landlords \$200.00 plus tax and there were other damages that require repair such as holes in the ceiling, damage to the wall paneling and a broken light switch. I accept that the landlords' losses for cleaning and damage, plus recovery of the filing fee that I award to the landlords, are at least \$300.00, the amount of the security deposit. Accordingly, I grant the landlords request to retain the tenant's security deposit.

Conclusion

The landlords are authorized to retain the tenant's security deposit in full satisfaction of the landlords' claims against the tenant. The balance of the landlord's claims are dismissed without leave.

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: June 08, 2018

Residential Tenancy Branch