



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

On November 20, 2017, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* ("the Act") for a monetary order for unpaid rent or utilities, and to keep the security deposit.

The matter was set for a conference call hearing at 2:00 pm on this date. The Landlord, Ms. C.B. and the Tenants attended the teleconference hearing.

At the start of the hearing I introduced myself and the participants. The hearing process was explained. The evidence was reviewed and confirmed received by the Tenants. The parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to present affirmed oral testimony and to make submissions during the hearing.

I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Issues to be Decided

- Are the Landlords entitled to a monetary order to recover unpaid rent?
- Are the Landlords entitled to keep the security deposit towards unpaid rent?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on May 1, 2016, as a one year fixed term tenancy to continue thereafter as a month to month tenancy. Rent in the amount of

\$1,200.00 is to be paid by the first day of each month. The Tenants paid the Landlord a security deposit of \$600.00 and a pet damage deposit of \$600.00.

The original Landlord sold the rental property and the new Landlord took possession of the rental unit, and the rights and responsibilities of the tenancy, on October 15, 2017.

The Landlord testified that a dispute arose following an inspection of the rental unit and an issue regarding the parking of vehicles on the property.

The Landlord testified that they issued the Tenants a breach letter on November 15, 2017, addressing the Landlord's concerns. The Landlord testified that the Tenants responded by serving the Landlord with a letter dated November 17, 2017, stating that the Tenants are moving out on November 20, 2017.

The Landlord testified that the Tenants moved out on November 19, 2017, without giving the proper notice required under the Act. The Landlord testified that the Tenants did not pay the rent owing under the tenancy agreement for the month of December 2017. The Landlord testified that she found new Tenants to move into the rental unit as of December 15, 2017. The Landlord is seeking \$600.00 for a loss of rent for half of December 2017.

The Landlord is seeking to keep the security deposit and pet damage deposit in the amount of \$600.00 in full satisfaction of the claim for loss of rent.

In reply, The Tenants submitted that the Landlords were not complying with the terms and conditions of the tenancy established back in May 2016. The Tenant, Mr. DJH submitted that the Landlord wanted them to pay more rent and changed the service of cable. The Tenant submitted that he wanted to strike a deal, but it was not good enough for the Landlord.

The Tenants wrote a letter to the Landlord and decided to move out rather than continue the dispute.

The Tenant, Mr. DJH, submitted that he believed he could give 10 days' notice to end the tenancy.

The Tenant submitted that the original Landlord failed to conduct a move in inspection and provide a copy to the Tenants.

Analysis

Section 45 of the Act provides that a Tenant may end a tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the Landlord receives the notice.

The Residential Tenancy Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

The damages awarded are an amount sufficient to put the landlord in the same position as if the tenant had not breached the agreement. As a general rule this includes compensating the landlord for any loss of rent up to the earliest time that the tenant could legally have ended the tenancy.

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities, I find that the Tenants ended the tenancy without giving the Landlord proper notice as required under section 45 of the Act.

There is insufficient evidence from the Tenants to establish that the tenancy was ended correctly due to the Landlords' breach of a material term of the tenancy.

I find that the Tenants owe the Landlords the amount of \$600.00 for a loss of December 2017, rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. As the Landlord was successful with the application, I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I order that the Landlord can keep \$700.00 from the security deposit and pet damage deposit in full satisfaction of the Landlord's claim.

Even if I accepted the Tenant's submission that the original Landlord failed to conduct a condition inspection and provide a copy of the report, I find that extinguishment of a right to apply against a security deposit only applies to claims for damage to a rental unit. An Arbitrator has the right under section 72 of the Act to order a party to a dispute resolution proceeding to pay any amount to the other from any security deposit or pet damage deposit.

The Landlord is ordered to return the balance of the deposits in the amount of \$500.00 to the Tenants. The Tenants are granted a monetary order in the amount of \$500.00.

Conclusion

The Tenants ended the tenancy without giving proper written notice to the Landlords.

The Landlord has established a monetary claim for a loss of rent in the amount of \$600.00 and \$100.00 for the filing fee. I order that the Landlord can keep the security deposit and pet damage deposit in the amount of \$700.00 in full satisfaction of the Landlord's claim.

I order the Landlord to return the balance of \$500.00 to the Tenants.

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: July 04, 2018

Residential Tenancy Branch