



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, for compensation for damage to the unit, site or property, to retain the Tenants' security and pet deposits and to recover the filing fee for this proceeding.

The Landlord's agent said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on June 1, 2018. Based on the evidence of the Landlord's agent, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties represented.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there a loss or damage and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is there damage to the unit, site or property and if so how much?
6. Is the Landlord entitled to compensation for damage and if so how much?
7. Is the Landlord entitled to keep the Tenant's security and pet deposits?

Background and Evidence

This tenancy started on December 1, 2017 as a fixed term tenancy with an expiry date of July 31, 2018. Rent was \$2,250.00 per month payable on the 1st day of each month. The Tenant paid a security deposit of \$1,125.00 and a pet deposit of \$1,125.00 on September 6, 2017. The Tenant said they moved out of the unit on April 24, 2018. A

move in condition inspection report was completed. The Landlord said she contacted the Tenants to do a move out condition inspection but the Tenants did not respond to her text messages.

At the start of the hearing the Landlord's agent said the Landlord is withdrawing the claims for the damage to the patio door, the closet door and any cleaning costs. The Agent said the Landlord is only seeking the unpaid rent for May, 2018 of \$2,250.00 and the unpaid utilities of \$349.77. The Landlord's agent said the Tenants broke the tenancy agreement by moving out before the end of the fixed term of the tenancy agreement and the Tenants did not give proper notice to end the tenancy.

The Tenant said she agrees that they are responsible for the utilities of \$349.77 and the Landlord can retain that amount from the Tenants' security deposit.

The Tenant continued to say they do not believe they are responsible for the May 2018 rent as the unit was unsafe to live in. The Tenant continued to say that at 2:00 am on April 20, 2018 a neighbor tenant and another person broke into the Tenants' unit and they were fighting with each other. The neighbor tenant was taken to hospital with serious injuries and the Police were called. The Tenant said there have been charges laid and their unit was a mess after the fight. The Tenant said the patio door was broken, closet doors were smashed and there was blood through out the rental unit. The Tenant said the Police told her to move out as the unit may not be safe for them to live in. The Tenant continued to say that she phone the Landlord's Agent on April 20, 2018 and she did not get a response until April 24, 2018, the day they moved out of the unit. The text message chain in the evidence confirms a text conversation between the Landlord's agent and the Tenant on April 24, 2018. The Tenant said they are moving out at the end of the month and the Landlord's agent's response was questions about the broken door and the blood in the unit. There was no mention of a move out date in the Landlord's agent's text. The Tenant said that considering the condition of the rental unit, that the doors would not lock correctly and that the Landlord's agent did not respond to them, she believes that they did the right thing by moving out.

The Tenant continued to say that when the Agent did not respond to their calls they believed the Landlord's agent had agreed that the tenancy would end at the end of April 2018.

The Landlord's agent said that she was very busy with many properties at that time so she was unable to respond to the Tenants before April 24, 2018 and she did not realize the situation was as serious as it was. The Agent said she agrees the doors were damaged, but she believes that the exterior doors still worked and could be locked. Further the Landlord's agent said that she would not agree to a move out date of May 1, 2018, because it was too short a notice to rent the unit to new tenants. The Agent said she believes they agreed to end the tenancy on May 31, 2018. As a result the Tenants are responsible for the May, 2018 rent of \$2,250.00

The Tenant said that is not what was agreed to. The Tenant said they agreed to end the tenancy at the end of April 2018 or earlier.

The Landlord's agent said this is a fixed term tenancy and therefore the Tenants are responsible for the May, 2018 rent.

The Tenant said she had no closing remarks.

The Landlord's agent said they are seeking the May 2018 rent of \$2,250.00, the unpaid utilities, to recover the filing fee and to retain the Tenants' security and pet deposits as partial payment of those amounts.

Analysis

I have reviewed the testimony and evidence provided by both the Landlord and the Tenants. It is obvious that a violent crime occurred in the Tenants rental unit on the night of April 19/20, 2018.

The parties have agreed that the Tenants are responsible for the utilities and I order the Landlord to retain \$349.77 from the security deposit.

The balance of this dispute is whether the Tenants are responsible for the May 2018 rent of \$2,250.00. From the text message chain submitted into the evidence it appears the Tenant's text of April 23, 2018 indicates that they were moving out of the unit at the end of the month, meaning April 30 2018. The Tenant moved out April 24, 2018. The Landlord's agent did not clarify the end date of the tenancy to the Tenants in this text message exchange, but on May 4, 2018 the Agent indicated that she thought they had agreed to end the tenancy at the end of May, 2018. This exchange of messages was 10 days after the Tenants had moved out. As a property manager the Landlord's agent is responsible to document changes in the tenancy. There is no written mutual agreement to end tenancy completed which would have clarified the end date of the tenancy and the terms of the ending. As both parties agreed the tenancy was ending before the fixed term of the tenancy this should have been done to clarify when the tenancy was ending. Consequently, it is clear that both parties agreed to end the tenancy early but it is not clear if it was the end of April 2018 or the end of May 2018.

Further section 44 of the Act states the situations that can end a tenancy. Section 44 (1) (e) says that a tenancy can end if the tenancy is frustrated. I accept the Tenants testimony that the tenancy was frustrated by the crime and that the Tenants were traumatised by the incident. Therefore, I find the Tenants had the right to end the tenancy. I also accept the Landlord's agent agreed to end the tenancy early as she agreed to end the tenancy at the end of May 2018 which is still earlier than the fixed

term of the tenancy agreement. As the Landlord's agent is a property manager with many properties under her control, I find it was incumbent on the Landlord's Agent to document the early ending of a fixed term tenancy with a Mutual Agreement to End Tenancy. As this was not done it is a situation of what the Tenant's say vs. what the Landlord's Agent says. I accept the Tenant testimony that the parties agreed to end the tenancy at the end of April. Consequently I find the Tenants are not responsible for the May 2018 rent of \$2,250.00.

As the Landlord has only been partially successful in this matter I order the Landlord to bear the cost of the \$100.00 filing fee that is already paid.

I order the Landlord to retain \$349.77 of the Tenants security deposit.

Further I order the Landlord to return \$775.23 of the Tenant security deposit and the full pet deposit of \$1,125.00 forthwith. The Tenant can make application to recover the deposits after 15 days from receiving this decision if the deposits have not been returned.

Conclusion

The Landlord is ordered to retain \$349.77 of the Tenants' security deposit.

The Landlord is ordered to return the balance of the security deposit and the full pet deposit to the Tenants forthwith.

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 24, 2018

Residential Tenancy Branch