



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

This hearing was convened in response to an application for dispute resolution by the Landlords pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. An Order to retain the security deposit - Section 38; and
3. An Order to recover the filing fee for this application - Section 72.

The Tenants did not attend the hearing. I accept the Landlord’s evidence that each Tenant was served with the application for dispute resolution and notice of hearing (the “Materials”) by registered mail on March 15, 2019 in accordance with Section 89 of the Act. Section 90 of the Act provides that a document served in accordance with section 89 of the Act is deemed to be received if given or served by mail, on the 5th day after it is mailed. Given the evidence of registered mail I find that the Tenants are deemed to have received the Materials on March 20, 2019. The Landlords were given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Landlord confirms that its application was made March 12, 2019 and sets out a total claimed amount of \$2,000.00 with details that this amount is being claimed for unpaid rent. The Landlord confirms that included in its evidence package provided to the Residential Tenancy Branch (the “RTB”) on May 14, 2019 is a monetary order worksheet that sets out details for unpaid rent and additional claims for a total claimed

amount of \$2,249.09. The Landlord confirms that no amendment to that application has been made.

Rule 2.2 of the RTB Rules of Procedure provides that claims are limited to what is stated in the application. As the other items in the monetary worksheet are not included as claims in the application and as no amendment was made to add more claimed items or to increase the monetary amount being claimed, I find that the Landlord's claims are restricted to that which is set out in the application.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Did the Landlord make its application for the claim to retain the security deposit in the time allowed?

Is the Landlord required to repay the Tenants double the security deposit?

Background and Evidence

The tenancy originally started in July 2015. At the outset of the tenancy the Landlord collected \$900.00 as a security deposit. A subsequent written tenancy agreement was entered into between the Parties with a start date of March 1, 2018 on a fixed term to end June 30, 2019. Rent of \$2,000.00 was payable on the first day of each month. The Landlord continued to hold the original security deposit of \$900.00. On January 10, 2019 the Tenants verbally informed the Landlords that they were moving out of the unit on January 27, 2019. On January 11, 2019 the Tenants informed the Landlord by text that they would move out of the unit on January 27, 2019. On January 15, 2019 the Tenants provided their forwarding address by text. The Parties communicated during the tenancy through text, email and phone and the Landlord served its application to the Tenants to the forwarding address provided by the Tenants.

The Tenants had rented the entire unit consisting of 5 bedrooms. On January 10, 2019 the Landlord advertised the upper half of the unit for \$2,100.00 a month and advertised

the lower part of the unit separately. The upper unit was rented for March 15, 2019. The Landlord claims \$2,000.00. The Landlord had previously made its application on February 5, 2019 but withdrew that application.

Analysis

Section 45(2) of the Act provides that 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.

Section 44(1)(d) of the Act provides that a tenancy ends where a tenant vacates or abandons the rental unit. Based on the Landlords' undisputed evidence of the fixed term tenancy I find that by vacating the unit on February 27, 2019 and ending the tenancy the Tenants breached the Act by ending the tenancy prior to the fixed term.

Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. This section further provides that where a landlord or tenant claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement the claiming party must do whatever is reasonable to minimize the damage or loss. Although the Tenants breached the Act, based on the Landlord's evidence that the upper half of the unit was advertised for more rent than what the Tenants had been paying for the entire unit I find that the Landlord failed to take reasonable steps to reduce or mitigate its losses being claimed. I therefore dismiss the claim for \$2,000.00.

Section 38 of the Act provides that within 15 days after the later of the date the tenancy ends, and the date the landlord receives the tenant's forwarding address in writing, the

landlord must repay the security deposit or make an application for dispute resolution claiming against the security deposit. Where a Landlord fails to comply with this section, the landlord must pay the tenant double the amount of the security deposit. As the Parties communicated during the tenancy through text and as the Landlord relied on the Tenants' text of its forwarding address to make and serve its application to the Tenants at their forwarding address I find that the Tenants provided its forwarding address as required. Although the Landlord made an application in February 2019 as the Landlord withdrew that application in effect no application was made at that time. As the Landlord made its application to claim against the security deposit on March 12, 2019 I find that the application to claim against the security deposit was made later than 15 days after the end of the tenancy. As a result I find that the Landlord must now pay the Tenants double the security deposit of \$1,800.00 plus zero interest. As the Landlords' claim has not been successful I decline to award recovery of the filing fee and in effect the application is dismissed in its entirety.

Conclusion

I Grant the Tenant an Order under Section 67 of the Act for **\$1,800.00**. If necessary, this order may be filed in the Small Claims Court and enforced as an order of that Court.

This decision is made on authority delegated to me by the Director of the RTB under Section 9.1(1) of the Act.

Dated: June 07, 2019

Residential Tenancy Branch