



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR MNDC MNSD FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* (the "Act") for:

- a monetary order for unpaid rent and utilities pursuant to section 67;
- a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement pursuant to section 67;
- authorization to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary order requested pursuant to section 38;
- authorization to recover the filing fee for this application from the tenant pursuant to section 72.

The hearing was conducted by conference call. All named parties attended the hearing and were given a full opportunity to provide affirmed testimony and present evidence. No issues were raised with respect to the service of the application and evidence submissions on file.

Issues

Is the landlord entitled to a monetary award for unpaid rent, utilities and compensation for loss?

Is the landlord entitled to retain all or a portion of the tenant's security deposit in partial satisfaction of the monetary award requested?

Is the landlord entitled to recover the filing fee for this application from the tenants?

Background and Evidence

The tenancy began on March 1, 2019 with a monthly rent of \$2400.00 payable on the 1st day of each month plus 70% of utilities. The tenant paid a security deposit of \$1200.00 at the start of the tenancy which the landlord continues to hold. The lease was for a one-year fixed term set to end on February 29, 2020. Due to personal and financial reasons, on July 31, 2019 the tenants provided notice to vacate effective August 31, 2019. The tenants vacated on August 15, 2019.

The landlord is claiming unpaid hydro from March 13, 2019 to August 31, 2019 in the amount of \$672.80 and unpaid gas from May 10, 2019 to August 31, 2019 in the amount of \$57.45. The landlord submitted a tenant ledger and copies of utilities bills reflecting the amount outstanding.

The tenants did not dispute the unpaid utilities amounts other than to argue that the landlord advised them they would only be responsible until the date they vacated.

The landlord is also claiming unpaid rent for the period of September 1, 2019 to October 18, 2019. The landlord submits the tenants broke the fixed term lease early and the tenants should be responsible for the rent until October 18, 2019 as this is the date the landlord was able to re-rent the unit. The landlord testified they started advertising the rental unit as early as August 6, 2019 which was immediately following the long weekend after the tenants provided notice. The landlord submitted a response sent to the tenants after receiving notice advising the tenants that they would still be responsible for the lease obligations until such time that the unit was re-rented. The landlord submits that any prospective tenants referred by the tenants were not suitable.

The tenants argued they had people lined up for the landlord, but the landlord denied every person that they referred. The tenants argue the landlord found a new more affordable property for the tenants and knew the tenants could not afford to pay rent for two units at the same time. The tenants submit the landlord did not in good faith attempt to re-rent the unit and did not even lower the price.

The landlord waived its claim for liquidated damages.

Analysis

Section 7 of the Act provides for an award for compensation for damage or loss as a result of a landlord or tenant not complying with this Act, the regulations or their tenancy

agreement. Under this section, the party claiming the damage or loss must do whatever is reasonable to minimize the damage or loss.

As per section 45 of the Act, a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the fixed term unless the landlord has breached a material term of the tenancy agreement.

The tenancy agreement required the tenants to pay 70% of the utilities. The landlord submitted a ledger and utilities bills in support of the outstanding amounts claimed. The tenants did not dispute or provide evidence in support of paying the outstanding amounts. The tenants provided insufficient evidence that they were told by the landlord that they were only responsible for utilities until the date they vacated. The landlord is awarded **\$730.25** for unpaid utilities as claimed.

There was no dispute that the tenants ended the fixed term lease early contrary to section 45 of the Act. I accept the landlord's testimony and evidence and find the landlord attempted to mitigate losses by re-renting the rental unit as soon as possible but suffered a loss of rent for the period of September 1, 2019 to October 18, 2019. The tenant submitted insufficient evidence that they found suitable prospective tenants which the landlord unreasonably denied. It is also not reasonable to expect the landlord to reduce the rent as the landlord had a lease for the \$2400.00 amount which was valid for an additional 6 months.

I award the landlord **\$3,793.55** (\$2400.00 for September + \$2400.00 x 18/31 days for October) for loss of rent as claimed.

As the landlord was successful in this application, I find that the landlord is entitled to recover the **\$100.00** filing fee paid for this application for a total monetary award of **\$4623.80**.

The landlord continues to hold a security deposit in the amount of \$1200.00. I allow the landlord to retain the security deposit and pet deposit in partial satisfaction of the monetary award pursuant to section 38 of the Act.

Therefore, I find that the landlord is entitled to a Monetary Order in the amount of **\$3423.80**.

Conclusion

Pursuant to section 67 of the *Act*, I grant the landlord a Monetary Order in the amount of **\$3423.80**. Should the tenant fail to comply with this Order, this Order may be filed in the Small Claims Division of the Provincial Court and enforced as an Order of that Court.

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: January 09, 2020

Residential Tenancy Branch