



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding WW PROJECTS LTD.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FFL

Introduction

On December 9, 2019, the Landlord submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; to keep the security deposit, and to recover the filing fee.

The matter was set for a conference call hearing. The Landlord and 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 each party. 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

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

Background and Evidence

The Landlord and Tenants testified that the tenancy began on July 1, 2017, as a six-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,050.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$487.50. The Landlord provided a

copy of the tenancy agreement. The Landlord and Tenants testified that the tenancy ended on December 1, 2019 when the Tenants moved out of the unit.

The Landlord testified that the Tenants moved out without giving proper written notice to end the tenancy.

The Landlord testified that she received a text message from the Tenants on November 10, 2019 stating that the Tenants are moving out on December 1, 2019. The Landlord testified that she then informed the Tenants that they are required to give one clear months' notice to end the tenancy. The Landlord provided a copy of the text message.

The Landlord testified that the rental unit was not rented out to a new tenant for the month of December 2019 and no rent income was received for the rental unit for the month of December 2019. The Landlord suffered a loss of rent in the amount of \$1,050.00.

The Landlord is seeking \$1,050.00 for unpaid rent and requests to keep the security deposit of \$487.50 in partial satisfaction of the claim.

In reply, the Tenants provided testimony confirming that they gave the Landlord their notice to end tenancy on November 10, 2019 using text message.

The Tenants testified that they are in agreement with the Landlords testimony; however, they submitted that the Landlord failed to conduct a move in inspection and failed to conduct a move out inspection as required by the Act.

Analysis

Section 45 of the Act provides that a tenant may end a periodic 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, and

(b) 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.

Residential Tenancy Policy Guideline # 3 Claims for Rent and Damages for Loss of Rent provides the following information:

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.

Residential Tenancy Policy Guideline # 5 Duty to Minimize Loss provides the following information:

Where the tenant gives written notice that complies with the Legislation but specifies a time that is earlier than that permitted by the Legislation or the tenancy agreement, the landlord is not required to rent the rental unit or site for the earlier date.

Section 24 (2) of the Act provides that the right of the Landlord to claim against a security deposit or a pet damage deposit, or both, for damage to residential property is extinguished if the Landlord does not perform an inspection and complete an inspection report in accordance with the regulations.

Based on the evidence before me, the testimony of the Landlord and Tenants, and on a balance of probabilities, I make the following findings:

I find that the Tenants did not give proper written notice to end the tenancy and moved out of the unit prior to the earliest date the tenancy could legally end. The Tenants effective date was earlier than one month after the date the landlord received the notice.

I find that the Landlord did not rent out the unit for December 2019 and suffered a loss of rent for December 2019. I find that the Tenants are responsible to pay the Landlord \$1,050.00 for December 2019 rent.

While I accept that the Landlord may not have performed a move in inspection or move out inspection and may have extinguished the right to claim against the security deposit for damage; I note that the Landlord's application is not a claim for damage, it is a claim for unpaid rent.

In addition, section 72 of the Act provides that if I order a Tenant to pay any amount to a Landlord the amount may be deducted from any security deposit or pet damage deposit due to the Tenant.

I authorize the Landlord to keep the security deposit of \$487.50 in partial satisfaction of the rent the Tenants owe for December 2019.

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

I find that the Landlord has established a total monetary claim of \$1,150.00 comprised of \$1050.00 rent; and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$487.50 towards the award of \$1,150.00, I find that the Landlord is entitled to a monetary order in the amount of \$662.50. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenants are cautioned that costs of such enforcement are recoverable from the Tenants.

Conclusion

The Tenants failed to give proper notice to end the tenancy and the Landlord suffered a loss of one month rent.

The Landlord has established a monetary claim in the amount of \$1,150.00. I order that the Landlord can keep the security deposit in the amount of \$487.50 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order for the balance of \$662.50

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: March 12, 2020

Residential Tenancy Branch