



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNRL-S, MNDCL-S, FFL

Introduction

This hearing was convened in response to an application for dispute resolution made February 4, 2020 by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

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

The Parties were each given full opportunity under oath to be heard, to present evidence and to make submissions.

Preliminary Matter

The Tenants state that the Landlord has not set out their legal last names in the application. The Landlord agrees to the application being amended to set out the last names as provided by the Tenants. Given this amendment I change the Tenants last names for this decision and any order that may be issued.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The following are agreed facts: The tenancy started in 2016. A last written tenancy agreement was entered into with a start date of September 1, 2019 to end August 31, 2020. The Tenants moved out of the unit on January 21, 2020. Rent of \$2,700.00 was payable on the first day of each month. At the outset of the tenancy the Landlord collected \$1,350.00 as a security deposit and \$500.00 as a pet deposit. No rent was paid for January 2020. The Landlord received the Tenants' forwarding address on February 3 or 4, 2020.

The Tenant does not dispute the Landlord's claim for unpaid rent of \$2,700.00. The Tenants state that during the tenancy the Landlord, among other things, failed to make repairs, gave an illegal rent increase and charged excessive late fees.

The Landlord states that the Tenants breached the fixed term tenancy and the Landlord claims lost rental income of \$2,700.00 for February 2020. The Landlord states that the Tenants informed them by email on January 1, 2020 that it was ending the tenancy for January 31, 2020. The Landlord states that on January 23, 2020 they placed an advertisement online for a new tenancy at monthly rent of \$3,200.00. The Tenants provide a copy of an advertisement of the unit for monthly rent of \$3,200.00

Analysis

Section 26 of the Act provides that a tenant must pay the rent when and as provided under the tenancy agreement whether or not the landlord complies with this Act, the regulations or the tenancy agreement. Given that the Tenants do not dispute the claim for unpaid January 2020 rent, I find that the Landlord has substantiated an entitlement to unpaid rent of \$2,700.00. The Tenants are at liberty to make an application for dispute resolution to make any claims they may have against the Landlord.

Section 7 of the Act provides that:

(1) If a landlord or tenant does not comply with this Act, the regulations or their tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

(2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

Based on the undisputed evidence that the Landlord advertised the unit for a greater amount of rent than was being sought in this claim, I find that the Landlord failed to take any reasonable steps to mitigate its loss claimed. I dismiss the Landlord's claim for lost rental income.

As the Landlord's application has met with some success, I find that the Landlord is entitled to recovery of the **\$100.00** filing fee for a total entitlement of **\$2,800.00**.

Deducting the combined security and pet deposits plus zero interest of **\$1,850.00** from the Landlord's entitlement leaves **\$950.00** owed by the Tenants.

Conclusion

I Order the Landlord to retain the security deposit plus interest of \$1,850.00 in partial satisfaction of the claim and I grant the Landlord an order under Section 67 of the Act for the remaining **\$950.00**. 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 Residential Tenancy Branch under Section 9.1(1) of the Act.

Dated: June 26, 2020

Residential Tenancy Branch