



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 dealt with cross Applications for Dispute Resolution filed by the parties under the *Residential Tenancy Act* (the “Act”).

On September 30, 2020, The Landlords filed an Application requesting to recover unpaid rent and /or utilities; to keep all or part of the security deposit or pet deposit; and to recover the cost of the filing fee.

On September 30, 2020, the Tenants applied for a monetary order for the return of a security deposit or pet damage deposit.

The Landlords and Tenant attended the hearing. The hearing process was explained, and the participants were asked if they had any questions. All participants in the hearing provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions to me. The parties testified that they have exchanged the documentary evidence before me.

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

- Are the Landlords entitled to a monetary order for unpaid rent?
- Are the Landlords entitled to keep the security deposit towards their claim?
- Are the Tenants entitled to the return of the security deposit?

Background and Evidence

The Parties testified that the tenancy began on September 1, 2019, as a six-month fixed term tenancy that continued thereafter on a month to month basis. Rent in the amount of \$1,200.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlords a security deposit of \$600.00 and a pet damage deposit of \$600.00.

April 2020 Rent

The Landlords are seeking a monetary order for \$450.00.

The Landlord testified that the Tenants did not pay all the rent owing under the tenancy agreement for the month of April 2020. The Landlord testified that the Tenants only paid \$750.00 of the \$1,200.00 amount owing.

The Landlord testified that they agreed to reduce April 2020 rent to \$750.00 based on a March 31, 2020 text conversation with the Tenant that the Landlord would receive a \$500.00 rent subsidy payment from the Government due to the covid pandemic. The Landlord provided copies of the text conversations.

The text conversations indicate that on April 15, 2020 the Landlord asked the Tenants if they had completed the application for the temporary rental supplement that needs to be initiated by the Tenant. The Tenants replied on April 16, 2020 that they will look into it. The Tenants later replied to the Landlord that they are not eligible due to their household income. On April 17, 2020 the Landlord replied, "No problem, we understand! If it helps for the next three months, we can reduce your rent by \$100 each month."

The Landlord submits that the unpaid April 2020 rent was not forgiven, but rather the Landlord understood that the Tenants did not qualify for the subsidy.

The Landlord testified that they did not want to continuously hound the Tenants for repayment because of the rent payment restrictions in place due to the covid pandemic.

The Tenant testified that the Landlords claim to recover the unpaid April 2020 rent is not in good faith. She testified that the Landlord never said that it was not a gift and it will need to be paid back.

The Tenant testified that when they found out that they were not eligible for a grant and notified the Landlord, the Landlord responded with “no problem we understand!”.

The Tenant testified that they moved out of the rental unit due to financial difficulties. The Tenant testified that there was no damage to the rental unit and that any lack of communication was the Landlord’s fault.

Security Deposit

The Parties testified in agreement that the Tenants provided their forwarding address to the Landlords on September 28, 2020.

The Landlord testified that at the end of the tenancy they requested permission from the Tenants to keep the amount of \$450.00 from the security deposit but the Tenants refused. On September 30, 2020 the Landlords applied to keep the security deposit and pet damage deposit towards their claim for unpaid rent. The Landlord returned the balance of \$550.00 to the Tenants on October 1, 2020 using e-transfer.

Analysis

Section 38 (1) of the Act states 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 any security deposit or pet damage deposit to the Tenant with interest calculated in accordance with the regulations or make an application for dispute resolution claiming against the security deposit or pet damage deposit.

Section 72 of the Act provides that if the director orders a party to a dispute resolution proceeding to pay any amount to the other, the amount may be deducted, in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant.

After considering the evidence before me and on balance of probabilities, I make the following findings:

April 2020 Rent

I find that the Tenants were obligated under the tenancy agreement to pay the Landlord \$1,200.00 rent for April 2020. I find that the Landlord accepted the Tenants suggestion to pay less April rent based on the proposal that the Landlord would recover the balance

from the Government. When the Tenants failed to qualify for the grant, I find that they were responsible to pay the balance of rent owing to the Landlord.

While the Tenant suggests the Landlord did not say the reduction of rent was not a gift which needs to be paid back, I find there is insufficient evidence from the Tenants that the Landlord said the reduction in rent was a gift that did not need to be paid back. I find that the Landlord agreed to the reduction based on the condition that the balance owing would be recovered by the Landlord. I do not accept that the Landlord's comment of "no problem we understand!" meant that the Landlord was forgiving the debt.

I find that the Tenants owe the Landlord the amount claimed of \$450.00 for unpaid April 2020 rent.

Security Deposit

I find that the Landlords applied to keep the security deposit in accordance with section 38 of the Act. The Landlords had a right to withhold repayment of the security deposit and pet damage deposit until a decision was made at the hearing.

I find that the Landlord already returned the amount of \$550.00 to the Tenants on October 1, 2020. The Landlord is holding a deposit of \$450.00.

I find that the Landlord is authorized to keep the \$450.00 deposit in satisfaction of the unpaid April 2020 rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlord was successful with their application; however, the Tenants were not. I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

The Landlords are granted a monetary order in the amount of \$100.00.

Conclusion

The Tenants failed to pay the full rent owing under the tenancy agreement for the month of April 2020. The Tenants are responsible to pay the Landlords the amount of \$450.00.

The Tenants' application to recover \$450.00 from a security deposit was not successful and is dismissed.

The Landlord is authorized to keep the \$450.00 that is withheld from the Tenants security deposit.

I order the Tenants to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

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: November 25, 2020

Residential Tenancy Branch