



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 as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on January 8, 2021. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee for the cost of this application.

The Landlord attended the hearing. However, the Tenants did not. The Landlord stated that she sent the Notice of Hearing, and evidence to the Tenants' forwarding address (provided when they moved out) by registered mail on September 23, 2020 (tracking info provided). Pursuant to section 89 and 90 of the Act, I deem this package was served to the Tenants 5 days after it was mailed, September 28, 2020.

The Landlord was provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to 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.

The Landlord stated she was not wishing to pursue recovery of the filing fee. I hereby amend the Landlord's application accordingly.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?

- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

The Landlord stated that she is seeking compensation because the Tenants failed to give proper notice when they moved out. The Landlord stated that monthly rent was set at \$1,500.00, and was due on the first of the month. The Landlord stated she still holds a \$750.00 security deposit, and a \$750.00 pet deposit.

The Landlord stated that the Tenants are on a month-to-month tenancy, and on July 9, 2020, the Tenants sent a text message saying they would be moving out by August 1, 2020. The Landlord stated that she asked for proper notice, in writing, but the Tenants never provided anything further. The Landlord stated that after getting a follow up text message from the Tenants on July 20, asking if anyone had come to view the property, the Landlord decided to post the ad, as the Tenants clearly had no intentions of staying. The Landlord stated she posted the ad on July 20, 2020, for the same amount of rent, and subsequently lowered this to \$1,350.00 in early August.

The Landlord stated that she was able to re-rent the unit starting September 1, 2020, for \$1,350.00, but due to the Tenants' short and improper notice, she is seeking to recover August rent in the amount of \$1,500.00.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

The Landlord is seeking to recover lost rent for August 2020, the period of time that the unit was vacant. I turn to section 45 of the *Act*:

Tenant's notice

45 (1) 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.

I find the Tenants breached section 45 of the Act by failing to give at least one month written notice to the Landlord. Not only did the Tenants fail to give their notice, in writing, to the Landlord, they also provided less than adequate notice. A text message sent 3 weeks in advance of the move-out date is not sufficient to avoid breaching section 45 of the Act. If the Tenants wanted to end the tenancy at the end of July, they should have ensured the landlord received their Notice, in writing, no later than the end of June.

Given the Tenants breached section 45(1) of the Act, I find they are liable for August 2020 rent in the amount of \$1,500.00. I note the Landlord reposted the ad in a reasonably prompt manner, considering she was waiting for proper written notice. Even though proper notice was not given, the Landlord took steps to mitigate her loss, and even went as far as to reduce the rental rate to attract renters. I find the Landlord sufficiently mitigated her loss, and is entitled to the full amount of her claim. I award \$1,500.00.

I authorize the Landlord to retain the full amount of the security and pet deposit (totalling \$1,500.00), which compensates her for the above noted rental loss.

Conclusion

The Landlord is authorized to retain the security and pet deposit, in full.

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 08, 2021

Residential Tenancy Branch