



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FFL

Introduction

On December 3, 2020, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; to keep a security deposit, and to recover the filing fee.

This matter was set for hearing by telephone conference call at 1:30 pm on this date. The Landlord and Tenant attended the 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. The parties were informed that recording the hearing was not permitted and 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

- Are the Landlords entitled to recover unpaid rent?
- Can the Landlords keep the security deposit towards their claims for unpaid rent?
- Are the Landlords entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on February 1, 2020, as a one-year fixed term tenancy. Rent in the amount of \$1,200.00 was to be paid to the

Landlords by the first day of each month. The Tenant paid the Landlords a security deposit of \$600.00. The Landlord provided a copy of the tenancy agreement.

The Landlord testified that the Tenants ended the fixed term tenancy agreement early by moving out of the rental unit in November 2020.

The Landlord testified that the Tenant did not pay the rent due under the tenancy agreement for the month of December 2020.

The Landlord testified that on November 14th she offered the Tenant an opportunity to end the fixed term tenancy early provided the Tenant gave her one months notice. The Landlord informed the Tenant that the tenancy could end on December 15th and the Tenant would only have to pay \$600.00 for half the months rent.

The Landlord testified that on November 18, 2020 the Tenant gave written notice to end the tenancy for December 15, 2020.

The Landlord testified that the Tenant moved out of the rental unit on at the end of November and did not pay the rent of \$600.00 owing for December 2020.

The Landlord is seeking to recover the amount of \$600.00 for unpaid December 2020 rent.

The Landlord applied on December 3, 2020 to keep the security deposit of \$600.00 in satisfaction of the claim for unpaid rent.

In reply, the Tenant testified that she observed mold in the rental unit and requested the Landlord resolve the issue and have an inspection. The Tenant stated that she could not stay in the unit because she was getting sick and the Landlord was not going to resolve the issue to her satisfaction.

The Tenant testified that she applied for dispute resolution but changed her mind and withdrew her application prior to serving the Landlord.

The Tenant stated that she did not pay the rent owing for December 2020 because she could not stay in the unit due to her concerns with mold.

The Tenant suggested that the Landlord failed in her duty to mitigate by looking for a new tenant to take over the rental unit for December 2020.

The Landlord testified that mold was due to poor air circulation that was controlled by the Tenant. The Landlord offered to provide a dehumidifier.

Analysis

Section 45 of the Act provides the following information regarding a Tenants notice to end tenancy for a periodic tenancy and for a fixed term tenancy.

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.

A tenant may end a fixed term 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,
- (b) is not earlier than the date specified in the tenancy agreement as the end of the tenancy, and
- (c) 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. The landlord must make reasonable efforts to find a new tenant to move in on the date following the date that the notice takes legal effect.

Section 26 of the Act provides that a tenant must pay rent when it is due under the tenancy agreement, whether or not the landlord complies with this Act, the regulations or the tenancy agreement, unless the tenant has a right under this Act to deduct all or a portion of the rent.

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

I find that the tenancy agreement required the Tenant to pay the Landlord monthly rent of \$1,200.00 by the first day of each month.

I find that the Landlord permitted the Tenant to end the tenancy as if the tenancy was a periodic tenancy and also permitted the Tenant to only pay half of the December 2020 rent owing under the tenancy agreement.

I find that based on the Landlords offer, there was no obligation for the Landlord to try and find a new tenant for the unit for December 2020.

I accept the testimony before me that the Tenant did not pay the \$600.00 rent due under the agreement for the month of December 2020. I find that a tenant cannot unilaterally decide that they are not paying the rent. Section 26 of the Act prohibits a tenant from making this unilateral decision unless there is a legal right to withhold rent.

I find that the Tenant did not have a legal right to withhold payment of December 2020 rent. I find that the Tenant owes the Landlord \$600.00 for unpaid December 2020 rent.

I authorize the Landlord to keep the security deposit of \$600.00 towards the award of \$600.00 for unpaid December 2020 rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlord was successful with their application, I order the Tenant to repay the \$100.00 fee that the Landlords paid to make application for dispute resolution.

I find that the Landlord has established a total monetary claim of \$700 comprised of \$600.00 in unpaid rent; and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$600.00 towards the award of \$700.00, I find that the Landlord is entitled to a monetary order in the amount of \$100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant failed to pay the rent owing under the tenancy agreement for the month of December 2020 and did not have a legal right under the Act to not pay the rent.

The Landlord has established a monetary claim in the amount of \$700.00. I order that the Landlord can keep the security deposit in the amount of \$600.00 in partial satisfaction of the Landlords' claim.

I grant the Landlords a monetary order in the amount of \$100.00.

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 25, 2021

Residential Tenancy Branch