



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MND, MNSD, FFL

Introduction

On March 3, 2021, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) seeking a monetary order for unpaid rent; a monetary order for damage; and to keep a security deposit and /or a pet damage deposit.

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. The parties were provided with an opportunity to ask questions about the hearing process. The parties provided affirmed oral testimony and to made submissions during the hearing. The parties were informed that recording the hearing is not permitted.

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.

Preliminary and Procedural Matters

Three days prior to the hearing the Landlords called the Residential Tenancy Branch inquiring about amending the application to increase the amount of the monetary claim for damage to the rental unit. The Landlords did not amend their application by completing an amendment application and serve it to the Tenants.

In addition, the Landlords failed to provide the full particulars of the claim for damage. The Landlords did not provide a monetary order worksheet that itemized the repairs and identified that costs associated to each repair. I find that failure to provide this

information impacts the Tenants right to know the case against them and prepare a response.

The Landlords' claim for a monetary order for damage to the rental unit is dismissed with leave to reapply.

Issues to be Decided

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

Background and Evidence

The Landlord and Tenants testified that the tenancy began on November 1, 2018, on a month to month basis. Rent in the amount of \$2,000.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,000.00. The Landlord provided a copy of the tenancy agreement.

The Landlord and Tenants testified that the Tenants moved out of the rental unit in February 2018.

March 2021 Rent

The Landlord testified that the Tenants failed to provide proper written notice to end the tenancy for the end of February 2021. The Landlord testified that he received a written notice to end tenancy from the Tenants via email. The Landlord testified that the Tenants sent the email to him on January 30, 2021. The Landlord testified that he received the email on February 2, 2021. The Landlord submitted that the earliest the tenancy could end is March 30, 2021.

The Landlord testified that he did not rent the unit out for March 2021 and he did not receive any rent from anyone for March 2021.

The Tenants replied that they sent the email with their notice to end tenancy in accordance with the Act. The Tenants testified that they used an email address that the parties regularly used to correspond about tenancy matters.

The Tenants suggested that other emails sent to the Landlord after the January 30 email were received by the Landlord. The Tenants stated that the rent e-transfer email

of January 31, 2021 was received by the Landlord. The Tenants later confirmed that the e-transfer was accepted by the Landlord on February 6, 2021.

The Landlord confirmed that the rent e-transfer was received and accepted by him on February 6, 2021.

Security Deposit

The Landlord has applied to keep the security deposit of \$1,000.00 in partial satisfaction of the claim for unpaid rent.

The Tenants testified that they left the rental unit clean. The Tenants asked if they had any further testimony on this claim and they replied “no”.

Analysis

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.

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.

Section 44 of the Residential Tenancy Regulation provides that a document given or served by email in accordance with section 43, unless earlier received, is deemed to be received on the third day after it is emailed.

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 on January 30, 2021 the Tenants sent the Landlord an email containing their written notice to end tenancy for the end of February 2021. I find that the email is

deemed to have been received by the Landlord on the third day after it was mailed. I find that on February 2, 2021 the Landlord received the Tenants email containing the notice to end tenancy.

The Tenants notice to end tenancy automatically corrects to be March 30, 2021 which is the earliest date the tenancy could legally end.

I find that the tenancy was on a month to month basis and the Landlord was not obligated to rent the unit out prior to the earliest date the tenancy could end. I accept that the Landlord did not re-rent the unit for March 2021 and suffered a loss of March 2021 rent.

I find that the Tenants are responsible to pay the rent owing under the tenancy agreement for March 2021. I grant the Landlord a monetary order in the amount of \$2,000.00.

I authorize the Landlord to keep the security deposit of \$1,000.00 towards the award of \$2,000.00

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 \$2,100.00 comprised of \$2,000.00 for March 2021 rent; and the \$100.00 fee paid by the Landlord for this hearing. After setting off the security deposit of \$1,000.00 towards the award of \$2,100.00, I find that the Landlord is entitled to a monetary order in the amount of \$1,100.00. 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 for the end of February 2021. The Tenants are responsible to pay the rent for March 2021.

The Landlord has established a monetary claim in the amount of \$2,100.00. I order that the Landlord can keep the security deposit in the amount of \$1,000.00 in partial satisfaction of the Landlord's claim.

I grant the Landlord a monetary order in the amount of \$1,100.00.

The Landlords' claim for a monetary order for damage to the rental unit is dismissed with leave to reapply.

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: July 20, 2021

Residential Tenancy Branch