



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SKYLINE LIVING
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, FFL

Introduction

On March 12, 2021, the Landlord 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 or pet damage deposit, and to recover the filing fee.

The matter was set for a conference call hearing. The Landlord’s agent (“the Landlord”) and the Tenant attended the teleconference hearing. At the start of the hearing, I introduced myself and the participants. The hearing process was explained. The parties were provided with an opportunity to ask questions about the hearing process. 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.

Preliminary and Procedural Matters

The Tenant stated that she did not receive any notice of the hearing from the Landlord.

The Landlord testified that the Tenants were served with the Notice of Dispute Resolution Proceeding using registered mail sent on March 18, 2021 to the forwarding address provided by the Tenants at the end of the tenancy. The Landlord provided a copy of the registered mail receipt and tracking number as proof of service.

The Tenant stated that the address used by the Landlord for service of the documents is incorrect and that the Landlord made a small mistake when they recorded the Tenants' forwarding address.

Since the Tenant was present and since the Landlord's claim relates to a loss of rent due to an early end of a fixed term tenancy, the Tenant was asked if she agreed to proceed with the hearing rather than make the Landlord reapply or having the hearing adjourned. The Tenant agreed to proceed with the hearing and to give direct testimony.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover unpaid rent?
- Can the Landlord keep the security deposit and/ or the pet damage deposit towards the claim?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The Landlord and Tenant testified that the tenancy began on September 1, 2020, as a one-year fixed term tenancy to continue until August 31, 2021. Rent in the amount of \$1,650.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$825.00 and a pet damage deposit of \$825.00. The Landlord provided a copy of the tenancy agreement.

The Landlord submitted that the Tenants breached the fixed term tenancy agreement by moving out of the rental unit on February 28, 2021, which is prior to the end of the fixed term agreement.

The Landlord testified that the Landlord was not able to re-rent the unit for the entire month of March 2021. The Landlord is seeking \$904.84.00 for a loss of 17 days of March 2021 rent.

The Landlord stated that they advertised the rental unit as soon as it was vacant. The Landlord testified that they did not receive any rent from anyone for the first 17 days of March 2021. The Landlord testified that a new tenant was found as of March 18, 2021 at a lower monthly rent.

In reply, the Tenant testified that in January 2021, they notified the Landlord that they needed to break the lease. The Tenant stated that the Landlord was informed that they were agreeable to permit showings and take photographs of the rental unit.

The Tenant submitted that she contacted the Residential Tenancy Branch and was informed that a generalized advertisement for the rental unit is not sufficient and also stated that the Landlord did not start advertising to rent the unit until after they moved out.

Security Deposit

The Landlord is seeking to keep the security deposit of \$825.00 and the pet damage deposit of \$825.00 in satisfaction of the claim for a loss of March 2021 rent.

In reply, the Tenant testified that the Landlord did not return the security deposit and pet damage deposit to them as agreed upon at the move out inspection.

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.

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.

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 Landlord and Tenants entered into a fixed term tenancy agreement that was to continue until August 31, 2021. I find that the Tenants breached the fixed term tenancy agreement by moving out on February 28, 2021 prior to the end of the fixed term agreement. I find that the Tenants are responsible to pay the rent owing under the tenancy agreement until the rental unit was re-rented.

I find that the Landlord was not obligated to advertise for a new tenant until the Tenants ended the tenancy by vacating the rental unit.

I accept the Landlord's evidence that the rental unit was not re-rented until March 18, 2021, and I find that the Landlord suffered a loss of rent in the amount of \$904.84. I award the Landlord the amount of \$904.84 for March 2021 rent.

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 applied against the security deposit and pet damage deposit within 15 days of the tenancy ending. I authorize the Landlord to keep \$1,004.84 from the security deposit and the pet damage deposit in satisfaction of the award for March 2021 rent and the recovery of the filing fee.

After setting off the award of \$1,004.84 from the deposits of \$1,650.00 held by the Landlord, I order the Landlord to return the balance of \$645.16 to the Tenants.

I grant the Tenants a monetary order in the amount of \$645.16. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlord is cautioned that costs of such enforcement are recoverable from the Landlord.

Conclusion

The Tenants breached the fixed term tenancy agreement by moving out of the rental unit early.

The Landlord was not able to re-rent the rental unit for the entire month of March 2021 and the Tenants are responsible to pay 17 days of March 2021 rent owing under the tenancy agreement.

I order that the Landlord can keep \$1,004.84 from the security deposit and pet damage deposit.

I grant the Tenants a monetary order in the amount of \$645.16 for the balance of the security deposit and pet damage deposit.

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: August 10, 2021