



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 March 7, 2021, the Landlord filed an application requesting to recover unpaid rent; to keep a security deposit or pet damage deposit; and to recover the cost of the filing fee.

On April 6, 2021, the Tenants filed an application for the return of a security deposit.

The Landlord and Tenants appeared at the hearing. The Tenants were assisted by their son acting as their agent. The hearing process was explained, and the participants were asked if they had any questions. The parties testified that they exchanged the documentary evidence before me. 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 make submissions to me. 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.

Issues to be Decided

- Is the Landlord entitled to the monetary relief sought for unpaid rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Are the Tenants entitled to the return of the security deposit?

Background and Evidence

The Parties testified that the tenancy began on October 15, 2020 and was on a month-to-month basis. Rent in the amount of \$1,800.00 was due to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit of \$900.00.

Loss of March 2021 Rent

The Landlord testified that the Tenants failed to give proper written notice to end their tenancy for the end of February 2021. The Landlord pointed out that the Act requires the Tenants to provide written notice to Landlord prior to the day the rent is due under the tenancy agreement. The Landlord stated that the Tenants verbally mentioned they were moving out but did not provide proper written notice to move out at the end of February 2021.

The Landlord testified that after the Tenants mentioned they were moving out, he decided to sell the residential property. The Landlord testified that he received an offer on the residential property that was accepted on March 2, 2021 and the new owners took possession of the property on April 30, 2020. In February 2021, the Landlord asked the Tenants to provide proper written notice because the Landlord was selling the home and he needed to ensure the tenancy was ending in accordance with the Act.

The Landlord testified that he has suffered a loss of March 2021 rent in the amount of \$1,800.00.

In response, the Tenants provided testimony acknowledging that they never gave proper written notice to end tenancy for the end of February 2021 to the Landlord.

The Tenants' son submitted that the Landlord sold the property and therefore could not have re-rented the unit; and furthermore, the Landlord has not suffered a financial loss under the Act. The Tenants' son sated that the Landlord never told his parents to provide written notice and did not inform them when he decided to sell the rental property.

The Tenant Ms. J.L. stated that the Landlord attempted to re-rent the unit at a higher monthly rent. She stated that she did not want to sign a notice to end tenancy in February because she did not want to be found responsible to pay March 2021 rent.

Security Deposit

On March 7, 2021 the Landlord applied to keep the security deposit of \$900.00 towards the claim for a loss of March 2021 rent. The Landlord testified that he is still holding the deposit and has not returned any amount of the deposit to the Tenants.

On April 6, 2021, the Tenants applied for dispute resolution seeking the return of the security deposit.

The Tenants confirmed that the Landlord is still holding the \$900.00 security deposit. The Tenants were given an opportunity to make further submissions but made no additional submissions in response to the Landlord's claim to keep the security deposit.

Analysis

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.

The Residential Tenancy Branch Policy Guideline #3 Claims for Rent and Damages for Loss of Rent provides:

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.

Based on all of the above, the evidence and testimony of the parties, and on a balance of probabilities, I find as follows:

Loss of Rent

I find that the parties entered into a month-to-month tenancy with rent due on the first day of each month. In order to end the tenancy for the end of February 2021, the Tenants were required to give proper written notice to end the tenancy to the Landlord before February 1, 2021. I find that the Tenants failed to give the Landlord proper written notice to end the tenancy for the end of February 2021.

I find that the Landlord is entitled to compensation for any loss of rent up to the earliest time that the Tenants could legally have ended the tenancy. The Tenant is obligated to pay the rent owing under the tenancy agreement for the entire month of March 2021 as that is the earliest date the tenancy could legally end.

With respect to the Tenants' submission regarding loss of rent and re-renting the unit at a higher rent; since the tenancy is on a month-to-month basis the Landlord was under no obligation to rent out the unit prior to March 31, 2021, which is the earliest date the tenancy could legally end. The Landlord stated that he did not re-rent the unit and he received no rent for the month of March 2021.

In addition, the Landlord had the right to sell the home. If the home had sold, the tenancy would have transferred to the new owner with the same terms and conditions. I find that the Landlord did not breach the Act, and I find that selling the home does not disqualify the Landlord from receiving the rent owing under the tenancy agreement for March 2021.

I award the Landlord the amount of \$1,800.00 for unpaid March 2021 rent.

Security Deposit

The Landlord applied for dispute resolution on March 7, 2021, which was within 15 days of when the tenancy ended.

I authorize the Landlord to keep the \$900.00 security deposit in partial satisfaction of the award 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 Landlords paid to make application for dispute resolution.

The Landlord established a monetary award in the amount of \$1,900.00. I authorize the Landlord to keep the security deposit of \$900.00. After applying the \$900.00 security deposit towards the Landlord's award of \$1,900.00, I grant the Landlord a monetary order for the balance of \$1,000.00. For enforcement, this monetary order must be served on the Tenants and may be enforced in Provincial Court.

Conclusion

The Tenants failed to end the tenancy in accordance with the *Act* and the tenancy agreement.

I find that the Tenants owe the Landlord \$1800.00 for the loss of March 2021 rent and \$100.00 for the cost of the filing fee.

The Landlord is authorized to keep the security deposit of \$900.00 and is granted a monetary order for the balance of \$1,000.00.

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: August 11, 2021

Residential Tenancy Branch