



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, FFL

Introduction

On January 4, 2023, the Landlords submitted an Application for Dispute Resolution seeking a monetary order for order for a loss of rent; to keep a security deposit and pet damage deposit and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlords and Tenants 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. 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 Matter

The Tenants testified that they did not serve a copy of their three video files to the Landlords prior to the hearing. Since the Landlords did not have an opportunity to consider or respond to the video evidence, it would be unfair for me to consider it. The Tenants' three video files are excluded from the hearing.

Issues to be Decided

- Are the Landlords entitled to a monetary order for unpaid rent and a loss of rent?
- Can the Landlords keep the security deposit and pet damage deposit in full or partial satisfaction of their claim for unpaid rent.

Background and Evidence

The Landlords and Tenants testified that the tenancy began December 1, 2022, as a six month fixed term tenancy requiring vacancy on May 31, 2023. The Landlords are moving into the unit at the end of the fixed term. Rent in the amount of \$3,500.00 was due to be paid to the Landlords by the first day of each month. The Tenants paid the Landlord a security deposit of \$1,750.00. and a pet damage deposit of \$1,750.00.

Unpaid January 2023 Rent \$3,500.00

The Landlords testified that the Tenants did not pay the rent owing under the tenancy agreement for the month of January 2023.

In reply, the Tenants provided testimony confirming that they did not pay the January 2023, and stated that they asked the Landlord to keep the security deposit and pet damage deposit towards the January 2023 rent owing.

Loss of Rent \$6,200.00

The Landlord testified that on December 30, 2022, he received a call from the Tenants that they were moving out of the rental unit in 30 days. The Landlords submitted that the Tenants breached the fixed term tenancy agreement by moving out of the rental unit prior to the end of the fixed term. The Landlords are seeking compensation for a loss of rent under the tenancy agreement. The Landlords stated that the Tenants did not discuss any concerns with them prior to notifying the Landlord that they were moving out.

The Landlords testified that beginning on January 4, 2023, they began to advertise the rental unit on local websites for a tenancy to start February 1, 2023 and to end on May 15, 2023 or May 30, 2023, at the same monthly rent of \$3,500.00. On January 22, 2023 a person contacted the Landlords and agreed to take over the tenancy as of February 15, 2023 at a reduced monthly rent of \$2,600.00 per month. The Tenancy with the new tenant continues until May 15, 2023.

The Landlords stated that in order to minimize their loss they accepted the new Tenant at the lower monthly rent.

The Landlords stated that they only had 10 views of their advertisement. The Landlord stated that on January 6 or 7 they also posted a rental advertisement on a marketplace website for \$3,500.00 per month. The Landlords stated that the Tenants also had their own advertisement on the marketplace website. The Landlords stated that the Tenants changed the amount of monthly rent in their advertisement to \$3,000.00 without consultation or approval. The Landlords stated that they asked the Tenant to remove their advertisement because it was under an unknown persons name.

The Landlords stated that the Tenants sent five people to them who were interested in the tenancy; however, some were not suitable, or wanted to change the terms of the tenancy and none of the interested parties worked out.

The Landlord is seeking compensation for loss of rent as follows:

February 1-15	Full rent	\$1,500.00
February 15-28	Difference in rent	\$450.00
March 2023	Difference in rent	\$900.00
April 2023	Difference in rent	\$900.00
May 1-15	Difference in rent	\$450.00
May 15-30	Full rent	\$1,500.00
total	\$6,200.00

In reply to the Landlords claims, the Tenants testified that they believed the tenancy would be a good fit for them; however, there was constant and excessive noise from aircraft and from a noisy laneway affecting the sleep of their young child. They stated they made the decision to move out based on the needs of their family.

The Tenants confirmed that on December 30, 2022, they notified the Landlord they were moving out in 30 days. The Tenants vacated the unit on January 25, 2023.

The Tenants testified that on January 5, 2023 they saw the Landlord's rental advertisement on a local website and they copied it and posted it on a marketplace website for the original terms of tenancy. On January 15, 2023, the Tenants changed the advertised rent for the unit to \$3,000.00 per month without checking with the Landlords. They stated that they never saw the Landlords' advertisement on the marketplace website. They stated they used a nickname for privacy reasons. They

stated that they understood they would be accountable for the \$500.00 loss of rent if it was rented for \$3,000.00 per month.

The Tenants stated that on January 31, 2023, the Landlord emailed them and stated they have found a new tenant. They stated that the Landlord proposed that they would not have to pay for any loss of rent from May 1-30 because they would be moving back into the unit on May 15, 2023. The Tenants testified that they should not have to pay for any loss of rent for the period of May 15 - May 30, 2023.

The Tenants testified that they referred 6-7 inquiries to the Landlord and it did not appear that the Landlord contacted them.

The Tenants submitted that the Landlords signed a tenancy agreement for rent of \$2,600.00 which is significantly lower than the rent of \$3,500.00.

Security Deposit

On January 4, 2023, the Landlords applied for dispute resolution and made a claim to keep the security deposit and pet damage deposit. The Landlord applied against the deposits prior to the Tenants moving out and prior to them providing a forwarding address.

The Tenants testified that the Landlord never completed a condition inspection report and gave the Tenants a copy at the start of the tenancy.

The Landlord provided testimony confirming that they did not complete a condition inspection report.

The Landlords are seeking to keep the security deposit and pet damage deposit towards unpaid January 2023 rent.

Analysis

The party making a claim for compensation against another party bears the burden of proof. Section 7 of the Act provides that if a Landlord or Tenant does not comply with the Act, the regulations, or their tenancy agreement, the non-complying Landlord or Tenant must compensate the other for damage or loss that results.

To be successful with a claim for compensation an applicant must prove:

1. That the other party breached the Act, regulation, or tenancy agreement.
2. That the breach caused the party making the application to incur damages or loss as a result of the breach.
3. The value of the loss; and,
4. That the party making the claim took reasonable steps to minimize the damage or loss.

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 67 of the Act provides that if damage or loss results from a party not complying with this Act, the regulations or a tenancy agreement, the director may determine the amount of, and order that party to pay, compensation to the other party.

Based on the evidence before me, the testimony of the Landlords and Tenants, and on a balance of probabilities, I find that the Tenants ended the fixed term tenancy early without any legal reason permitting them to end the tenancy early. I find that the Tenants are responsible to pay the Landlords for any loss of rent under the tenancy agreement, if the Landlord took reasonable steps to minimize the damage or loss.

I find that on December 30, 2022, the Tenants notified the Landlord they were moving out. I find that the Landlord took timely action 5 days later to advertise the rental unit by posting rental advertisements on local websites. 17 days later the Landlord entered into a tenancy agreement with a new tenant for a lower rent of \$2600.00 per month. I find that the Landlord took steps to minimize the loss by advertising the unit prior to when the Tenants move out.

I have considered whether the Landlords decision to lower the rent by \$900.00 per month was reasonable considering that the Landlords are seeking the Tenants to pay for the difference in loss of rent.

I have considered the terms of the original tenancy agreement. The agreement is for a fixed term that cannot continue thereafter on a month-to-month basis because the Landlords are moving back into the unit. The Landlords are tasked with trying to find someone who will agree to move into the unit for a short term of 4 months. There is no

opportunity for the tenancy to continue after the four months. I find it reasonable to conclude that there would be a small pool of people interested in such a short term tenancy situation at a relatively high monthly rent of \$3,500.00 per month

I have considered that if the Landlord did not accept the new Tenant there is a possibility that the rental unit would not have been rented out at all and the Tenants could be facing a larger monetary claim against them. A loss of rent for the remaining four months of tenancy is \$14,000.00. I have also considered that the Landlord may have rented the unit out for \$3,500.00 if he waited a longer than 17 days to re-rent the unit, and the Tenants would be facing a much lower monetary claim than the \$6,200.00 the Landlord is seeking.

I find that the Landlord lowering the rent by \$900.00 is a significant reduction in rent. However, every day that passed by without finding a new tenant would reduce the likelihood of finding a new renter and increase the loss to the Landlord. I find that the rent reduction of \$900.00 was reasonable when considering the circumstances that were present.

Unpaid January 2023 Rent

I find that the Tenants failed to pay the Landlords the rent owing under the tenancy agreement for the month of January 2023. I award the Landlords the amount of \$3,500.00.

Loss of Rent

I find that the Tenants breached the tenancy agreement by ending the six-month fixed term tenancy agreement early. I find that the Landlords took reasonable steps to mitigate against loss and the Tenants are responsible to pay the Landlords for a loss of rent and difference in rent received for the remaining four months of the tenancy.

I award the Landlords compensation as follows:

February 1-15	Full rent	\$1,750.00
February 15-28	Difference in rent	\$450.00
March 2023	Difference in rent	\$900.00
April 2023	Difference in rent	\$900.00
May 1-15	Difference in rent	\$450.00

May 15-30		\$0
total	\$4,450.00

The Landlords are moving into the rental unit on May 15, 2023, and therefore I find that they are not entitled to claim for a loss of rent for May 15 - May 30, 2023.

The Tenants owe the Landlords the amount of \$4,450.00 for a loss of rent the Landlords would have received under the original tenancy agreement.

Security Deposit and Pet Damage Deposit

I find that the Landlords extinguished their right to claim against the security deposit and pet damage deposit for damage when they failed to complete a condition inspection report and provide a copy to the Tenants at the start of the tenancy. However; the Landlords are seeking to keep the deposits towards unpaid rent and not damage. I authorize the Landlords to keep the \$1,750.00 security deposit and \$1,750.00 pet damage deposit in full satisfaction of the unpaid January 2023 rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. The Landlords were successful with their application. I order the Tenants to repay the \$100.00 fee for the cost of the application.

The Landlord has established a monetary award in the amount of \$8,050.00. After setting off the security deposit and pet damage deposit of \$3,500.00 against the award of \$8,050.00 I find that the Tenants owes the Landlords the balance of \$4,550.00.

I grant the Landlords a monetary order in the amount of \$4,550.00. The order must be served on the Tenants and may be enforced in the Provincial Court.

Conclusion

The Tenants ended the fixed term tenancy agreement early which resulted in the Landlord suffering a month of unpaid rent and a loss of rent for the four remaining months of the fixed term tenancy.

The Landlord has established a monetary claim for unpaid rent and loss of rent in the amount of \$8,050.00. I order that the Landlord can keep the security deposit and pet damage deposit of \$3,500.00 in partial satisfaction of the Landlords' awards..

I grant the Landlords a monetary order in the amount of \$4,550.00.

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: February 15, 2023

Residential Tenancy Branch