



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNR MNSD FF

Introduction

This hearing was convened as a result of the Landlord's Application for Dispute Resolution. A participatory hearing was held on March 13, 2023. The Landlord applied for the following relief, pursuant to the *Residential Tenancy Act* (the "Act"):

- a monetary order for unpaid rent or utilities;
- permission to retain the security deposit to offset the rent owed; and,
- to recover the filing fee from the Tenants for the cost of this application.

The Landlord's agent and the Tenant both attended the hearing and provided affirmed testimony. The Tenant confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. No service issues were raised.

Both parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions to me. 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.

Issue(s) to be Decided

- Is the Landlord entitled to compensation for unpaid rent or utilities?
- Is the Landlord entitled to keep the security deposit to offset the unpaid rent?

Background and Evidence

As per the tenancy agreement provided into evidence, the lease started November 15, 2021, and was set to run for a fixed term until May 31, 2022. Rent was \$1,425.00, and was due on the first day of the month. The Landlord collected, and still holds the Tenants' security deposit of \$712.50. The Tenants signed the tenancy agreement on October 13, 2021.

The Tenants stated they sent their forwarding address via text message sometime in November 2021. The Landlord was unclear as to what the message contained, and when it was received. The Landlord applied for a dispute resolution to retain the deposit on November 13, 2021. A hearing for that matter was scheduled for June 16, 2022. The Landlord failed to attend that hearing, and their application was dismissed, with leave to reapply. Subsequently, the Landlord filed against the security deposit again on June 20, 2022, (this proceeding).

The Tenants stated that they formally put their forwarding address in writing, for the purposes of the return of the deposit, and gave it to the Landlord around August 22, 2022. The Landlord stated that they had already filed against the deposit by that time, so they did not return it.

The Landlord stated that she is seeking compensation because the Tenants failed to move in, in accordance with their signed tenancy agreement. More specifically, the Tenants sent an email to the Landlord on November 14, 2021, the night before they were supposed to move in, and stated they did not wish to move in. The Landlord stated that they reposted the rental unit online, for the same price, the following day to try to re-rent the unit. The Landlord further stated that they were able to find new Tenants on December 14, 2021, effective January 1, 2022. The Landlord stated that given the late notice by the Tenants they lost out on rent for half of November, and all of December, totalling \$2,137.50. The Landlord is seeking to retain the security deposit of \$712.50, and to receive a monetary order for the balance, \$1,425.00.

The Tenants stated that he was unhappy with the Landlord's agent's "tone" and stated that they were not "willing to accommodate" some of their requests. One of the Tenants broke a wrist, and he was seeking different date accommodations. The Tenant stated that the Landlord's agent was curt and unfriendly, and he had concerns moving forward with the tenancy. The Tenant acknowledged backing out of the tenancy agreement. The Tenant does not feel it is fair for the Landlord to retain the deposits this whole time, waiting for this hearing.

Analysis

A party that makes an application for monetary compensation against another party has the burden to prove their claim.

In this instance, the burden of proof is on the Landlord to prove the existence of the damage/loss and that it stemmed directly from a violation of the *Act*, regulation, or tenancy agreement on the part of the Tenants. Once that has been established, the Landlords must then provide evidence that can verify the value of the loss or damage. Finally it must be proven that the Landlord did everything possible to minimize the damage or losses that were incurred.

Security Deposit

I note the Tenants stated they provided a text message to the Landlord the day they were supposed to take possession of the rental unit, and at that time they provided their forwarding address to the Landlord. However, I note the Landlord and the Tenant were unclear about what verbiage this text message contained, specifically. Further, I note that sending documents via text message is not an approved method of service under the Act. Section 38(1)(b) of the Act specifies that the Tenant must provide their forwarding address in writing to the Landlord, in order for the Tenants to be potentially entitled to double the security deposit. However, this must be done clearly, in writing, and served in an approved manner, as per section 88 and 89 of the Act.

In this case, I find the Tenants failed to formally provide their forwarding address in writing, and explicitly for the purposes of the return of the deposit, until August 2022, which is when they provided a written document to the Landlord. However, the Landlord had already applied against the deposit by the time, and I find the Tenants are not entitled to double the deposit, pursuant to section 38(6) of the Act. Further, I note the Landlord was granted leave to reapply for their claim against the deposit, for the rental losses.

The Landlord is seeking to recover lost rent for the period from November 15, 2021, until December 31, 2021, the period of time that the unit was vacant. I turn to section 16 and 45 of the Act:

Start of rights and obligations under tenancy agreement

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Tenant's notice

45 (2)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.

I find the Tenant breached section 45(2) of the Act by ending the tenancy prior to the end of the fixed term. I do not find the Tenants were legally able to end the tenancy agreement, without liability for the period of time covered by the initial lease agreement, given the circumstances presented. Although the Tenants are potentially liable for the entirety of the period of time they had for their initial lease, I note the Landlords are also required to mitigate their losses, and attempt to re-rent the unit at a reasonable economic rent, forthwith.

I note the Landlords re-posted the ad to re-rent the rental unit on November 15, 2021, the day after the Tenants told the Landlord they would not be moving in. I note this was reposted for the same amount. The Landlord was able to re-rent the unit on December 14, 2021, effective January 1, 2022. I find the Landlord sufficiently mitigated their loss of rent, and I award the recover of the rent for half of November and December 2021, \$2,137.50.

Since the Landlord was successful in this application, I award the recovery of the filing fee (\$100.00), pursuant to section 72 of the Act.

I authorize the Landlord to retain the security deposit currently held to offset what is owed. I find the Tenants still owe \$1,525.00, and the Landlord is entitled to a monetary order for this amount.

Conclusion

The Landlord is granted a monetary order pursuant to Section 67 in the amount of **\$1,525.00**. This order must be served on the Tenant. If the Tenant fails to comply with this order the Landlord may file the order in the Provincial Court (Small Claims) and be enforced as an order of that Court.

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 14, 2023

Residential Tenancy Branch