



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. The participatory hearing was held on May 16, 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 Tenant for the cost of this application.

The Landlord and the Tenants both attended the hearing and provided affirmed testimony. The Tenants confirmed receipt of the Landlord's Notice of Dispute Resolution Proceeding and evidence package. The Tenants stated that they posted their evidence to the Landlord's front door on May 1, 2023. The Landlord stated she doesn't actively reside at that house, and hasn't since the fall of 2022. I find there is insufficient evidence showing the Landlord actively resides at the house the Tenants left the evidence at. The Tenants also failed to send their evidence to the address for service for the Landlord, noted on the Notice of Dispute Resolution Proceeding. Since the Tenants failed to serve their evidence to the Landlord's address for service, I find it has not been sufficiently served, and is not admissible.

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.

Issues to be Decided

1. Is the Landlord entitled to a monetary order for unpaid rent or utilities?

Background and Evidence

Both parties agree that monthly rent is \$3,000.00, and is due on the 1st of the month. Both parties also agree that the Landlord still holds a security and pet deposit in the amount of \$3,000.00 (\$1,500.00 x 2).

The Landlord is seeking \$3,000.00 for rent for the month of August 2022. The Landlord stated that on July 29, 2022, the Tenants sent her an email stating they would be moving out by August 2, 2022, and that a move-out inspection could be done on August 3, 2022. The Landlord accepted this time for move-out inspection, but when she attended the unit at that time, the Tenants still had not fully vacated the property. After a few unsuccessful attempts by the Landlord to reschedule, she sent a 2nd and final notice for move out inspection for August 14, 2022. The inspection occurred at that time. A move-in and move-out inspection occurred and a report was completed.

The Landlord acknowledged receipt of the Tenant's forwarding address in writing on August 8, 2022, by mail. The Tenants confirmed they sent their forwarding address in writing by registered mail. The Landlord filed this application against the deposits on August 23, 2022.

The Landlord stated that she didn't re-post the unit to find new Tenants, in part because it was still for sale, and partly because she was going to potentially move back in in the fall sometime.

The Tenants assert they were all moved out of the rental property by August 2, 2022.

Analysis

In this instance, the burden of proof is on the Landlords 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.

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

Section 26 of the *Act* confirms that a Tenant must pay rent when it is due unless the Tenant has a right under the *Act* to deduct all or a portion of rent (security deposit overpayment, emergency repairs paid for by the Tenant, illegal rent increases, or another Order by an Arbitrator).

With respect to the Landlord's request for a Monetary Order for unpaid rent, I note the Tenants provided short and inadequate notice, contrary to section 45(1) of the *Act*, that they would be moving out only a couple days after they sent an email to the Landlord. I find this is a breach of the *Act*. Although this short notice may have contributed to the Landlord's rental loss for August, it is incumbent upon the Landlord to mitigate her loss as much as reasonably possible, as noted in the 4 part test above. In this case, I note the Landlord failed to re-post the rental unit in order to procure new tenants and mitigate her rental losses. It appears the Landlord left the unit empty while it was available for sale, and while she contemplated a move back into the house. Ultimately, I find the Landlord has failed to sufficiently demonstrate she mitigated her lost rent for August 2022. As such, I dismiss her application for this amount, in full, without leave.

Security and pet damage deposits

Pursuant to sections 24 and 36 of the *Act*, landlords and tenants can extinguish their rights in relation to security and pet damage deposits if they do not comply with the *Act* and Residential Tenancy Regulation (the "Regulations"). Further, section 38 of the *Act* sets out specific requirements for dealing with security and pet damage deposits at the end of a tenancy.

Pursuant to RTB Policy Guideline 17, I have considered whether the Tenants are entitled to return of the security and pet damage deposits, or double these, on the Application because the Tenants were not required to file their own Application for Dispute Resolution seeking return, or return of double, these.

Based on the testimony of both parties, I accept that the Tenants participated in the move-in and move-out inspections and therefore did not extinguish their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the Act.

It is not necessary to determine whether the Landlord extinguished their rights in relation to the security or pet damage deposits pursuant to sections 24 or 36 of the Act because extinguishment only relates to claims that are solely for damage to the rental unit and the Landlord has claimed for lost rent.

I find the tenancy ended for the purposes of section 38(1) of the Act on the move-out inspection date of August 14, 2022.

Based on the testimony of the parties, I find the Tenants provided their forwarding address to the Landlord via registered mail, and the Landlord received this on August 8, 2022.

Pursuant to section 38(1) of the Act, the Landlord had 15 days from the later of the end of the tenancy or the date the Landlord received the Tenants' forwarding address in writing to repay the security and pet damage deposits or file a claim against them. The Application was filed August 23, 2022. I find the Landlord filed the Application in time. I find the Landlord complied with section 38(1) of the Act in relation to timing, and I find the Tenants are not entitled to the return of double the security and pet deposits.

Interest on the deposits is calculated in accordance with the Act and the Regulations, and is calculated as follows (as of the date of this hearing):

2021 \$3000.00: \$0.00 interest owing (0% rate for 12.87% of year)
2022 \$3000.00: \$0.00 interest owing (0% rate for 100.00% of year)
2023 \$3000.00: \$21.80 interest owing (1.95% rate for 37.25% of year)

This amounts to interest of \$21.80, which is added on to the \$3,000.00 in deposits the Landlord holds.

I order the Landlord to return the deposits, plus interest, as the Landlord was not successful with this application.

Conclusion

The Tenants are granted a monetary order pursuant to Section 67 in the amount of **\$3,021.80**. This order must be served on the Landlords. If the Landlords fail to comply with this order the Tenants 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: June 5, 2023

Residential Tenancy Branch