



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in repose to the landlords application for a Monetary Order for unpaid rent; for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenants and landlord attended the conference call hearing, gave sworn testimony and were given the opportunity to cross exam each other on their evidence. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

- Is the landlord entitled to a Monetary Order to recover unpaid rent?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord permitted to keep the tenants security deposit?

Background and Evidence

All parties agree that this tenancy started on November 07, 2011. The tenants rented this unit and paid an equal share of the rent of \$500.00 per month each. The tenants also paid an equal share of the security deposit and paid \$250.00 (\$1,000.00) each on October 28, 2011. The parties also agree that the tenants paid an additional sum of \$1,000.00 which covered rent for the first two weeks from November 15 to November 30, 2011 and rent for the last two weeks of the tenancy.

The landlord testifies that the tenants had a written contract to rent this unit which was e-mailed to the tenants. There is no signed contract in place. The contract states the tenancy will start on November 07, 2011 for the entire full ski season. Anyone leaving the unit prior to the end of the ski season must fill the vacancy with approval of the landlord.

The landlord testifies that the unit was rented to six tenants. The four tenants named on the rental contract and the landlord's application for Dispute Resolution moved from the rental unit on January 01, 2012 after giving the landlord a Notice to vacate on December 21, 2011.

The landlord testifies that the tenants were responsible to find new tenants for the unit and the landlord states she did help the tenants by placing advertisements. Three new tenants were found for the unit for January 01, 2012 however a forth tenant could not be found until February 04, 2012. The landlord states as there was then a shortfall in the rent of \$500.00 for January, 2012 the landlord seeks to recover this from the tenants as agreed in the rental contract.

The landlord testifies that the forth new tenant was only able to rent the unit until March 19, 2012. That tenant did pay rent for February and March, 2012 however, this again left a shortfall in rent for two weeks in April to the end of the ski season. The landlord states she allowed this forth person to sublet the unit because the landlord had to mitigate her loss for the rent for February and March, 2012. The landlord seeks to

recover the sum of \$250.00 from the additional deposit paid by the tenants for this period and the balance of \$250.00 will be returned to the tenants.

The landlord testifies that as the tenants had entered into a fixed term contract until the end of the ski season they are responsible for any loss of rent up to that time.

The landlord testifies that she received the tenants forwarding address in writing on March 03, 2012. The landlord testifies that she has returned \$900.00 from the tenants' security deposit on either January 04 or January 05, 2012. The landlord seeks to retain \$100.00 from the security deposit because the tenants did not leave the rental unit in a reasonably clean condition. The landlord testifies she went to the rental unit on January 01, 2012 at 1.00 p.m. and found the tenants were still in bed after holding a New Year Eves party. The landlord states there was party mess still in evidence and the tenants had not put out the garbage or washed the sheets and towels. The landlord states she had to do this laundry and clean and prepare the unit for the new tenants arriving that day. The landlord testifies the on February 12, 2012 she received an e-mail from one of the tenants (SO) who wrote that he understood that they were in the wrong on the day they moved out and it shouldn't have happened and he apologises for that... and agrees with a \$50.00 clean up fee.

The tenant (EM) testifies that they had cleaned the entire unit the night before they left and have three letters from the new tenants describing the condition of the unit (not provided in evidence for this hearing). The tenants state they also put their sheets in the wash. The tenants agree the landlord did take out their garbage and did shovel the snow off the front steps. The tenants deny that they had held a party at the unit on New Year's Eve and they dispute the landlord's claim of \$100.00.

The tenants dispute the landlords claim for loss of rent of \$500.00 for January. The tenant (EM) testifies that the tenants were under the impression that if they found new tenants for the unit that they would not be held responsible for any loss of rent. The tenant (EM) states they were proactive in helping find new tenants and state the

landlord did not inform the tenants that she would keep their last month's rent if a forth tenant could not be found.

The tenant (EM) testifies that they did not sign the rental agreement as it was sent by e-mail. However the tenant states they did verbally agree with the terms of the agreement.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlords claim for a loss of rental income for January, 2012; I have considered the contract in place between the parties and despite the fact this contract was not signed by either party the tenants do state that they did agree with the terms of that contract This contract is for a fixed term tenancy and informs the tenants that they must find replacement tenants if they leave before the end of the fixed term.

Section 45(2)(b) of the *Act* states that a tenant may not end a fixed term tenancy earlier than the date specified in the tenancy agreement as the end of the tenancy. As the tenants did end their tenancy on January 01, 2012 the tenants are jointly responsible for any loss of income up to the end of the tenancy at the end of the ski season. Consequently as a forth tenant was not found until February 04, 2012 it is my decision that the landlord has established a claim for a loss of rent for January, 2012 of **\$500.00**.

With regards to the landlords claim for \$250.00 for a loss of income for two weeks in April, 2012; I find the same rule applies as above and the tenants remain responsible for this loss of income. The landlord was entitled to mitigate her loss in taking on this forth tenant to receive rent for that tenant for two months but in doing so this does not relieve the tenants of their responsibility for the fixed term contract. Consequently, it is my decision that the landlord has established a claim for a loss of rent for April, 2012 of **\$250.00**.

With regards to the landlords claim to keep \$100.00 from the tenants security deposit; The tenants contradict the landlords evidence in which the landlord states the tenants had a New Years Eve party and failed to clean up the unit, or wash their sheets and towels at the end of the tenancy. The tenants argue that they did not have a party and they did clean the unit on New Year's Eve and placed their sheets in the washer before they left the unit.

I have considered the arguments put forth and find when one party contradicts the evidence of the other party it become one person's word against that of the other. The landlord would therefore be required to provide corroborating evidence to satisfy the burden of proof. The landlord has provided an extract from an e-mail sent by the tenant (SO) in which he apologizes for what happened on the move out day and agreeing to pay a \$50.00 fee for clean up. In light of this it is my decision that the landlord has not established her claim for \$100.00 as the landlord has not established how much cleaning was required. However, I find the tenants did offer the sum of **\$50.00** for a clean up fee and therefore I find the landlord is entitled to recover this sum from the tenants.

A landlord is not entitled to take rent for the end of the tenancy at the start of a tenancy. However as an amount of \$1,000.00 was taken this amount reverts to a security deposit held in trust by the landlord until the end of the tenancy. The landlord has applied to keep the security deposit and \$250.00 from this money held in trust pursuant to s. 38 of the *Act*. As I have found largely in favor of the landlords claim for a loss of income I find the landlord is entitled to keep the security deposit plus additional amount, pursuant to s. 38(4)(b) of the *Act*.

As the landlord has been partially successful with this claim I find the landlord is entitled to recover the \$50.00 filing fee from the tenants pursuant to section 72(1) of the *Act*. A Monetary Order has been issued to the landlord for the following amount:

Loss of income for January	\$500.00
Loss of income for April	\$250.00

Cleaning costs	\$50.00
Plus filing fee	\$50.00
Subtotal	\$850.00
Less security deposit plus additional amount	(-\$1,100.00)
Total amount to be returned to the tenants	\$250.00

Conclusion

I HEREBY FIND largely in favor of the landlord's monetary claim. The landlord is entitled to retain the sum of **\$850.00** from the monies held in trust by the landlord.

The balance of the money held in trust must be returned to the tenants. A Monetary Order has been issued to the tenants for the sum of **\$250.00**. The Order must be served on the landlord and is enforceable through the Provincial Court 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: May 16, 2012.

Residential Tenancy Branch