



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, MNDC, FF

Introduction

This hearing dealt with a landlord's application for a Monetary Order for damage to the rental unit; unpaid rent and loss of rent; and, authorization to retain the security deposit. The tenants did not appear at the hearing. The landlord submitted that the hearing packages and evidence packages were sent to each tenant using registered mail sent to their forwarding address on July 9, 2014. The tenants' forwarding address appears on the move-out inspection report and the landlord provided the registered mail receipts as proof of service. I was satisfied the landlord served the tenants in a manner that complies with the Act and I continued to hear from the landlord without the tenants present.

On a procedural note, the landlord disclosed that she had made these claims against the tenants by way of a previous Application and that due to a procedural error on her part that application was dismissed with leave. I verified that the landlord's previous Application against the tenants was dismissed with leave and that this matter is not res judicata. Therefore, I proceeded to consider the claims made by way of this Application.

Issue(s) to be Decided

1. Is the landlord entitled to compensation for the amounts claimed?
2. Is the landlord authorized to retain the security deposit?

Background and Evidence

The tenancy started September 1, 2013 and the tenants paid a security deposit of \$625.00. The tenants were required to pay monthly rent of \$1,250.00 on the 1st day of every month for a fixed term set to expire September 1, 2014. The tenants vacated the rental unit at the end of February 2014. The landlord prepared move-in and move-out condition inspection reports.

The landlord submitted that the tenants sent the landlord a text message on January 16, 2014 indicating they would be ending the tenancy at the end of February 2014. The landlord met with the tenants on January 19, 2014 and provided the tenants with a copy of Residential Tenancy Policy Guidelines that deal with fixed term tenancies and claims for loss of rent and communicated to the tenants that she would commence efforts to re-rent the unit but would hold the tenants responsible for any loss of rent.

Also on January 19, 2014 the tenants authorized the landlord and the landlord agreed to accept the security deposit in partial satisfaction of the rent for February 2014 as the tenants had communicated that they did not have enough money. The tenants later paid \$350.00 toward rent owed for February 2014 leaving an outstanding balance of \$275.00 for February 2014. The landlord seeks to recover the balance of \$275.00 from the tenants.

The landlord commenced advertising efforts starting on January 20, 2014 by way of popular websites and posted advertisements in the building and around the condominium complex. The landlord scheduled showings to prospective tenants while the tenants were still in possession of the rental unit; however, the unit did not re-rent until April 1, 2014 despite the landlord's efforts to mitigate losses. The landlord provided multiple print-outs of advertisements she placed on-line and in the building as well as the notices of entry she gave to the tenants for showings to prospective tenants. The landlord seeks to recover from the tenants loss of rent for the month of March 2014 in the amount of \$1,250.00.

In addition, the landlord seeks to recover \$110.00 for drywall repairs and replacement of 5 light bulbs. The move-out inspection report reflects the tenants are responsible for these items and the tenant signed to indicate he agreed with the landlord's assessment of the damage and estimated costs to repair. The landlord explained that she paid her handyman to make these repairs and others for a cost in excess of \$110.00.

Analysis

Upon consideration of the undisputed evidence before me, I provide the following findings and reasons.

Under the Act, a tenant is required to pay rent that is due in accordance with the terms of their tenancy agreement. I accept the evidence before me that the tenants were required to pay rent of \$1,250.00 on February 1, 2014 and they failed to do so. I accept that the tenants paid the landlord \$350.00 toward rent for February 2014 and the tenants authorized the landlord in writing to retain their \$625.00 in partial satisfaction of

rent owed for February 2014 leaving an unpaid balance of \$275.00 for the month of February 2014. I find the landlord entitled to recover the unpaid portion of rent from the tenants in the amount of \$275.00 and I award that amount to the landlord.

Where a tenant ends a tenancy before the end of their fixed term, the tenant may be held responsible for loss of rent for the remainder of the fixed term provided the landlord makes reasonable efforts to mitigate the loss of rent. Based upon the tenancy agreement I find the tenants were obligated to fulfill their terms of tenancy until September 1, 2014 and they violated their tenancy agreement by ending the tenancy early. I accept that the landlord accepted the end of tenancy and put the tenants on notice that they would be liable for loss of rent. Upon consideration of the landlord's testimony and documentary evidence demonstrating her efforts to re-rent the unit I find the landlord made reasonable efforts to mitigate the loss of rent. Based upon all of these considerations, I find the landlord entitled to recover loss of revenue for the month of March 2014 from the tenants and I award the landlord \$1,250.00 for this loss, as requested.

Under the Act, a tenant must repair any damage that they cause by way of their actions or neglect. Where a landlord repairs damage caused by the tenant the landlord may hold the tenant liable for the cost of repairs. Based upon the move-out inspection report, I am satisfied that the landlord and tenant were in agreement that the tenants were responsible for drywall damage and replacing five light bulbs. I accept the landlord's submissions and evidence that these repairs cost her \$110.00 and I award that amount to the landlord.

Given the landlord's success in this Application I further award the landlord recovery of the \$50.00 filing fee paid for this Application.

Although the landlord sought authorization to retain the security deposit in filing this Application for Dispute Resolution, I find it unnecessary to further consider this request as I find the landlord has already obtained the legal right to retain the security deposit by way of the tenant's written authorization to do so on January 19, 2014 and the landlord has already recognized the security deposit in her claim for unpaid rent. Therefore, I find no further authorization or adjustment is necessary.

In light of all of the above, I provide the landlord with a Monetary Order calculated as follows:

Unpaid Rent: February 2014 (\$1,250 – \$625 – \$350)	\$ 275.00
Loss of Rent: March 2014	1,250.00
Damage and light bulbs	110.00
Filing fee	<u>50.00</u>
Monetary Order	\$1,685.00

To enforce the Monetary Order it must be served upon the tenants and it may be filed in Provincial Court (Small Claims) to enforce as an Order of the court.

Conclusion

The landlord has been authorized to retain the tenants' security deposit and the landlord has been provided a Monetary Order for the balance of \$1,685.00 to serve and enforce as necessary.

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: December 04, 2014

Residential Tenancy Branch

