



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, FF

Introduction

On January 3, 2018, the Landlord submitted an Application for Dispute Resolution for a monetary order for unpaid rent or utilities; to keep the security deposit; and to recover the cost of the filing fee. The matter was set for a conference call hearing.

The Landlords and Tenant attended the teleconference hearing.

The Parties were provided the opportunity to present evidence orally and in written and documentary form, and to make submissions at 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.

Issues to be Decided

- Is the Landlord entitled to a monetary order to recover a loss of rent?
- Is the Landlord entitled to keep the security deposit towards unpaid rent?
- Is the Landlord entitled to recover the cost of the filing fee?

Background and Evidence

The parties testified that the tenancy began on June 1, 2017, on a month to month basis. Rent in the amount of \$1,500.00 was to be paid by the first day of each month. The Tenants paid the Landlord a security deposit of \$750.00.

The Landlord testified that the Tenants did not give the proper notice to end the tenancy and the Landlord suffered a loss of rent for the month of December 2017.

The Landlord testified that on November 14, 2017, the Tenants gave verbal notice that they were moving out at the end of the month.

The Landlord testified that on December 15, 2017, he permitted new Tenants to move into the rental unit rent free in exchange for their agreement to perform cleaning and painting.

The Landlord is seeking the amount of \$750.00 for a loss of December 2017 rent and is seeking to retain the security deposit of \$750.00 in full satisfaction of his claim.

In response, the Tenant submitted that the Tenants sent the Landlord a text message on November 5, 2017, informing them that they were moving out. The Tenant submitted that he asked the Landlord if he could move out on December 2, 2017, and the Landlord approved.

The Tenant testified that their forwarding address was provided to the Landlord on December 28, 2017. The Tenant submitted that the Landlord failed to perform a move out inspection.

The Landlord acknowledged that a move out inspection was not completed.

Analysis

Section 45 of the Act provides that a Tenant may end a periodic tenancy by giving the Landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the Landlord receives the notice, and 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.

Based on the evidence before me, the testimony of the parties, and on a balance of probabilities, I find that the Tenants did not give the Landlord proper written notice to end the tenancy. Based on the evidence before me, the earliest the tenancy could end would be December 31, 2017.

The Landlord is entitled be put in the same position as if the tenancy ended properly. The Landlord did not find a new Tenant until December 15, 2017, and suffered a loss of half a month's rent. The Tenants are responsible to compensate the Landlord for the half month of rent for December 2017. I award the Landlord \$750.00.

Security Deposit.

Pursuant to section 36 of the Act, the Landlord extinguished the right to apply against the security deposit for damage when he did not perform a move out inspection at the end of the tenancy. However; the Landlords' claim is to keep the deposit towards unpaid rent.

Section 72 2 (b) of the Act permits an Arbitrator to order a party to pay an amount to another party and the amount may be deducted from any security deposit due to the Tenant.

I authorize the Landlord to retain the amount of \$750.00 from the security deposit in full satisfaction of the award for a loss of rent.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. I order the Tenant to repay the \$100.00 fee that the Landlord paid to make application for dispute resolution.

I find that the Landlords are entitled to a monetary order in the amount of \$100.00. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Tenant is cautioned that costs of such enforcement are recoverable from the Tenant.

Conclusion

The Tenant ended the tenancy without proper written notice and the Landlord suffered a loss of rent. The Landlord has established a monetary claim in the amount of \$750.00. I order that the Landlord can keep the security deposit in the amount of \$750.0 in full satisfaction of the Landlord's claim for a loss of rent.

I grant the Landlord a monetary order in the amount of \$100.00 for the filing fee.

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: September 25, 2018

Residential Tenancy Branch