



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing

DECISION

Dispute Codes MNR, MNDCL, MNSD, FF

Introduction

On February 2, 2023, the Landlords submitted an Application for Dispute Resolution under the *Residential Tenancy Act* (“the Act”) for a monetary order for unpaid rent; damage to the unit; to keep a security deposit and pet damage deposit; and to recover the cost of the filing fee.

On February 17, 2023, the Tenants submitted an Application for Dispute Resolution under the *Act* for the return of a security deposit and pet damage deposit and to recover the cost of the filing fee.

The matter was set for a conference call hearing. The Landlords and Tenants attended the teleconference. The Landlords were assisted by the property manager.

At the start of the hearing, I introduced myself and the participants. The Landlords and Tenants provided affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to make submissions at the hearing. The parties testified that they have exchanged the documentary evidence that I have before me.

The parties confirmed that they exchanged the documentary evidence before 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.

- Are the Landlords entitled to a monetary order for unpaid rent?

- Are the Landlords entitled to money owed or compensation for damage or loss?
- Are the Landlords entitled to keep the security deposit and pet damage deposit towards their claims?

Background and Evidence

The Landlords and Tenants testified that the tenancy began August 15, 2020, as a fixed term tenancy to continue until August 31, 2023. Rent in the amount of \$4,000.00 was to be paid to the Landlord by the first day of each month. The Tenants paid the Landlord a security deposit in the amount of \$2,000.00 and a pet damage deposit in the amount of \$2,000.00. The parties testified that the tenancy ended on January 27, 2023, when the Tenants vacated the rental unit.

Loss of Rent

The Landlords testified that the Tenants ended the fixed term tenancy early and therefore they are responsible to pay for a loss of rent under the fixed term tenancy agreement. The Tenants gave the Landlord written notice on October 10, 2022, stating their intention to move out of the rental unit at the end of January 2023.

The Landlords then listed the rental unit house for sale in the middle of November 2022, and a sale agreement was reached on January 5, 2023, for a possession date of March 8, 2023.

The Landlords stated that the Tenants did not pay any rent for the month of February 2023, or for 8 days of March 2023 when the purchaser of the home took possession. The Landlord is seeking compensation of \$5,032.26 for a loss of rent.

The Landlord stated that they had previously approached the Tenants with an offer to compensate them if they would agree to end the fixed term tenancy early, in order for the Landlord to sell the property to a purchaser who wanted vacant possession. The Landlord stated that the Tenants rejected their offer of compensation.

In reply, the Tenants testified that they gave the Landlord three months written notice that they were moving out and the Landlord did not take steps to mitigate against a loss of rent.

The Tenants stated that on November 15, 2022, the Landlord listed the rental unit for sale.

The Tenants acknowledged that they did not pay any rent to the Landlord for the months of February or March 2023. The Tenants stated that they spoke to someone at

the Residential Tenancy Branch about the issue of having to pay rent after they vacated, and they were informed they are not liable to pay rent.

Unpaid Utility Costs

The Landlord amended their monetary claims for unpaid Hydro and unpaid Gas utilities. The Landlord lowered the claim for unpaid hydro to \$125.50 and the lowered the claim for unpaid gas to \$300.76.

The Landlord testified that the Tenants are responsible under the tenancy agreement to pay hydro and gas costs. The Landlord stated that the Tenants cancelled their accounts and the Landlord then put these utility services under his name for the period of January 28, 2023, to March 7/8, 2023. The Landlord submitted that the Tenants are responsible to pay the utility costs because they did not have a right to end the fixed term tenancy agreement early.

In reply, the Tenants stated that the Landlord was at the property using the hydro and gas after they vacated, and it is unfair that they must pay the utility costs for the period after they had vacated the rental unit.

The Landlord acknowledged he was at the rental property every couple of days, and he stated that he needed to heat the house, but he lowered the temperature.

Security Deposit

The tenancy ended on January 27, 2023, and on February 2, 2023, the Landlords applied for dispute resolution to keep the security deposit and pet damage deposit of \$4,000.00 in partial satisfaction of their claims for a loss of rent and unpaid utility costs.

The Landlord testified that the Tenants provided their forwarding address to the Landlord on January 23, 2023.

In reply, the Tenants stated that they were supposed to be reimbursed within 15 days from the end of the tenancy.

Analysis

When a party makes a claim for damage or loss, the burden of proof lies with the applicant to establish the claim. To prove the claim, the Applicant must satisfy the following four elements on a balance of probabilities:

1. Proof that the damage or loss exists;
2. Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act, Regulation, or tenancy agreement;
3. Proof of the actual amount required to compensate for the claimed loss; and
4. Proof that the applicant followed section 7(2) of the Act by **taking steps to mitigate or minimize the loss or damage being claimed.**

[my emphasis]

Based on the evidence before me, the testimony of the Landlords and Tenants, and on a balance of probabilities, I make the following findings:

Loss of Rent

The Landlord is seeking compensation of \$5,032.26 for a loss of rent for February and March 2023.

I find that the Tenants breached the fixed term tenancy agreement by moving out early; however, the Landlords' claim for compensation for a loss of rent is dismissed for the following reasons:

Section 7 of the Act provides that a landlord or tenant who is claiming compensation must do whatever is reasonable to minimize the damage or loss. I find that as of October 10, 2022, the Landlords were aware that the Tenants were vacating the unit prior to the end of the fixed term tenancy agreement. There is no evidence from the Landlord that upon receiving notice from the Tenants he took steps to attempt to re-rent the unit by placing advertisements on local websites. Instead, on November 15, 2022, the Landlord listed the unit for sale. On January 5, 2023, the Landlord sold the residential property. I find that the Landlord chose to leave the rental unit empty rather than attempt to re-rent it. I note that leaving the unit empty more than likely benefitted the Landlord by being able to sell the property as vacant/ unoccupied.

I do not find it reasonable that the Landlord could take no action to re-rent the unit and still expect to receive compensation due to a loss of rent.

I find that the Landlord failed to take reasonable steps to minimize the damage or loss of his claim for loss of rent. The Landlords' claim for a loss of February 2023 rent and March 2023 rent is dismissed without leave to reapply.

Utility Costs:

The Tenants moved out of the rental unit on January 27, 2023, and cancelled their utility service accounts. The Landlord put the utility services under the Landlords name for the period of January 28, 2023, to March 7/8, 2023.

I find that the tenancy ended on January 27, 2023, when the Tenants vacated the rental unit. Since the Landlord did not take steps to re-rent the unit, I find that the Tenants are not responsible to pay for any utility services costs of the Landlord after the date the tenancy ended.

The Landlord's claim to recover utility costs from after the tenancy ended is dismissed without leave to reapply.

Security Deposit

I find that the Landlords made a claim against the \$2,000.00 security deposit and \$2,000.00 pet damage deposit within 15 days of receiving the Tenants' forwarding address in writing.

Section 72 of the Act gives me authority to order the repayment of a fee for an application for dispute resolution. Since the Landlords were not successful with their claims, I decline to award the recovery of the filing fee. I also decline to award the Tenants the cost of their filing fee due to their breach of the tenancy agreement.

As of the date of this decision, the deposits of \$4,000.00 have accrued \$20.30 in interest. I order the Landlords to repay to the Tenants, the balance of \$4,020.30 from the deposits being held in trust.

I grant the Tenants a monetary order in the amount of \$4,020.30. This monetary order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court. The Landlords are cautioned that costs of such enforcement are recoverable from the Landlords.

Conclusion

The Landlords were not successful with their claims for a loss of rent and to recover utility costs.

I order the Landlords to repay to the Tenants the balance of \$4,020.30 from the security deposit and pet damage deposit. I grant the Tenants a monetary order in the amount of \$4,020.30.

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: April 5, 2023

Residential Tenancy Branch