



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards
Ministry of Housing and Social Development

Decision

Dispute Codes: MNSD, FF

Introduction

Both parties were represented at the hearing. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present oral evidence, to cross-examine the other party, and to make submissions to me.

Issue(s) to be Decided

The issues to be decided are whether the Landlord is entitled to retain all or part of the security deposit paid by the Tenant; and to recover the filing fee for the cost of this Application for Dispute Resolution.

Background and Evidence

The Agent for the Landlord and the Tenant agree that this was a fixed term tenancy that was scheduled to end on March 31, 2009; that the tenancy ended on June 30, 2008; that the Tenant paid monthly rent of \$1,650.00; that the Tenant paid a security deposit of \$825.00 on April 01, 2008; and that the Tenant paid a pet deposit in relation to this rental unit, which has been returned to the Tenant, with interest.

The Landlord and the Tenant agree that the Tenant notified the Landlord of her intent to vacate the rental unit on June 30, 2008. The parties agree that the Tenant advised the Landlord that she wanted to find a new tenant to assume her lease; that she advertised the rental unit; and that she located a new tenant, who moved into the rental unit on July 01, 2008.

The Agent for the Landlord stated that the tenancy agreement does not permit Tenants to assign or sublet the rental property. The Agent for the Landlord stated that the Tenant referred the new tenant to them and they entered into a new tenancy with this person, as they do not authorize tenants to sublet rental units.

Article 18 of the tenancy agreement, which was submitted in evidence, stipulates that “the tenant will not assign, refer or sublet or otherwise part with possession of the premises without written consent of the landlord”.

The Landlord is seeking compensation, in the amount of \$866.25, for administration costs associated to approving the new tenant. The Agent for the Landlord estimated that the property management company spent approximately five hours processing the new tenant's application, signing a new lease, and completing the condition inspection report with the new tenant.

The Tenant argued that she should not be liable for any of the costs associated to finding a new tenant as she did all the work. She further argued that if she is responsible for administration fees associated to the new tenant, \$866.25 is an excessive amount.

The Landlord is seeking compensation, in the amount of \$146.36, for re-keying the locks. The Agent for the Landlord stated that the locks are routinely re-keyed at the end of every tenancy for security reasons, although he believes that the Tenant returned all of the keys to the Landlord.

The Tenant stated that she returned all of the keys to the rental unit, and she does not feel she should pay for having the locks re-keyed.

Analysis

Section 34(1) of the *Act* and article 18 of this tenancy agreement stipulate that a tenant must not assign a tenancy agreement or sublet a rental unit without the written consent of the Landlord. I find that the Tenant had authority, both under the *Act* and the conditions of the tenancy agreement, to assign her tenancy agreement to a new tenant provided she received written authorization from the Landlord.

Section 34(2) of the *Act* stipulates that the landlord must not unreasonably withhold consent to assign a tenancy agreement if the fixed term tenancy agreement is for six months or more. I find that the Landlord advised the Tenant that the Landlord did not permit tenants to assign tenancy agreements, which prevented her from exercising her right to obtain written consent to assign her tenancy agreement.

I find that the Landlord did incur some administrative costs when they entered into a tenancy agreement with the new tenant, however I find that they would not have incurred those costs if they had permitted the Tenant to assign her tenancy agreement.

Section 67 of the *Act* authorizes me to order one party to pay compensation to another party only if damage or loss results from the first party not complying with the *Act*. In these circumstances, I find that the administrative costs incurred by the Landlord arose

from the Landlord's refusal to allow the Tenant to assign her lease rather than the Tenant's noncompliance with the *Act*. Therefore, I do not find that the Tenant is required to compensate the Landlord for the administrative costs of the Landlord.

Section 37(2)(b) of the *Act* stipulates that tenants must give the landlord all of the keys and other means of access to the residential property that are in possession or control of the tenant. Both parties agree that the Tenant complied with section 37(2)(b) of the *Act*. There is nothing in the *Act* that requires tenants to re-key locks at the end of the tenancy.

Section 67 of the *Act* authorizes me to order one party to pay compensation to another party only if damage or loss results from the first party not complying with the *Act*. In these circumstances, I find that the Tenant did comply with the *Act* when she returned all of the keys in her possession to the Landlord. Therefore, I do not find that the Tenant is required to compensate the Landlord for the cost of re-keying the locks to this rental unit.

Conclusion

I find that the Landlord has not established a monetary claim and I therefore dismiss the Landlord's application to retain any portion of the Tenant's security deposit. I find that the Landlord must return the security deposit, plus interest, to the Tenant.

I find that the Landlords application is without merit, and I dismiss the Landlord's application to recover the filing fee from the Tenant for the cost of this Application for Dispute Resolution.

Date of Decision: September 23, 2008
