



Dispute Resolution Services

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Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

Dispute Codes MNSD, MNDC, OLC, O, FF

Introduction

This hearing dealt with cross applications. The landlord applied for a monetary order for losses under the Act. The tenants applied for an order to have the landlord comply with the Act and for a monetary order for return of the security deposit and pet deposit.

The hearing was held by teleconference with the landlord and her agent and both tenants in attendance.

The landlord's original application dated October 9, 2009 included a claim for damages to carpets in the rental unit, the landlord amended this application on January 20, 2010 to remove that claim and claim only for lost rent for the month of October 2009.

The tenants acknowledged in the hearing that their request for an order to have the landlord comply with the Act was no longer relevant as the tenancy was ended and they acknowledge they have received the pet damage deposit back and no longer dispute this; as such the tenants' application is amended to exclude these issues.

Issues(s) to be Decided

An issue to be decided is whether the tenants are entitled to a monetary order for the return of their security deposit and to recover the filing fee from the landlord for the cost of the Application for Dispute Resolution, pursuant to sections 38, 67, and 72 of the *Residential Tenancy Act (Act)*.

As well, it must be decided whether the landlord is entitled to a monetary order for compensation for lost rent; for all or part of the security deposit and to recover the filing fee from the tenant for the cost of the Application for Dispute Resolution, pursuant to sections 38, 45, 67, and 72 of the *Act*.

Background and Evidence

The tenancy began in May 2008 as a month to month tenancy for a monthly rent of \$850.00 due on the 1st of the month with a security deposit of \$425.00 and a pet damage deposit of \$50.00 paid in May, 2008.

The landlord submitted into evidence:

- A copy of a negotiated cheque to the tenants from the landlord for the return of the pet damage deposit;
- A copy of a typewritten notice from the tenants dated September 12, 2009 indicating the tenants would be moving out of the rental unit on September 30, 2009; and
- A notice of a rent increase issued by the landlord on August 29, 2009 for an effective date of December 1, 2009.

The tenants' testified that they had gone away for vacation in September 2009 and upon their return they were advised by the landlord she had entered into the rental unit to stop the toilet from running. The toilet had been malfunctioning and required the flush handle to be "jiggled" to stop the water supply from continually running.

The tenants were upset with the landlord's entry into the rental unit and felt violated. They decided they could no longer live in the rental unit and provided the landlord with the written notice to end the tenancy at the end of the month of September, 2009.

The tenants testified that they had come to an agreement with the landlord that the security deposit would be returned. No written agreement was made.

At the time the notice was received by the landlord she was preparing to leave the country for a month. She had arranged for her son to act as her agent in her absence. The landlord's agent testified that the rental unit is now rented but that they were unable to rent the unit for October 1, 2009.

The agent stated that they began to advertise the rental unit in mid November 2009 on Craig's List and not in any other media.

Analysis

Section 45 of the *Act* allows a tenant to end a tenancy by giving the landlord a notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord receives the notice.

This section goes on to say that if the landlord has failed to comply with a material term of the tenancy agreement the tenant may end the tenancy on shorter notice if the tenant has allowed the landlord to correct the situation.

I find the tenants failed to provide a notice to end the tenancy that was compliant with Section 45. I also find the tenants did not allow the landlord any time to correct the situation that had arisen to cause the tenants concern.

Section 7 of the *Act* states a landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with the *Act* must do whatever is reasonable to minimize the damage or loss.

Despite having appointed her son as her agent, I find the landlord has failed to mitigate lost rent by failing to advertise the rental unit prior to November 1, 2009. However, based on the balance of probabilities, I find it not likely that the landlord would have been able to rent the unit out for October 1, 2009 based on the late notice.

As such, I find it reasonable that the tenant is responsible for rent for the period in October, 2009 that would end on the same date as the date the tenants provided notice in September 2009 (September 12, 2009). The per diem rate for the month of October 2009 is \$27.42, resulting in the following calculation of 12 days at \$27.42 per day for a total of \$329.03.

Conclusion

I find that the landlord is entitled to monetary compensation pursuant to Section 67 in the amount of **\$329.03**. I order the landlord may deduct this amount from the security deposit and interest held in the amount of \$429.27 in satisfaction of this claim.

I find the tenants are entitled to the balance of the security deposit. I grant a monetary order in the amount of **\$100.24**. This order must be served on the landlord and may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

As both parties were partially successful in their claims, I dismiss both of their applications to recover the filing fee without leave to reapply.

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: February 05, 2010.

Dispute Resolution Officer