

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the tenants' Application for Dispute Resolution for a monetary order.

The hearing was conducted via teleconference and was attended by the tenants and the landlord and her agent.

Issues(s) to be Decided

The issues to be decided are whether the landlord is entitled to a monetary order for compensation for loss or damages; for double the amount of the 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)*.

Background and Evidence

The tenants submitted the following documents into evidence:

- A copy of a tenancy agreement signed by the parties on July 15, 2009 and an unsigned addendum for a 6 month fixed term tenancy beginning August 1, 2009 for a monthly rent of \$1,300.00 due on the 1st of the month, a security deposit of \$650.00 was paid;
- A copy of a receipt from the landlord to the tenants dated July 10, 2009 in the amount of \$650.00 for the security deposit;
- Correspondence between the two parties dating from October 28, 2009 to December 14, 2009, including a letter from the landlord acknowledging the tenants would not be responsible for rent during the period that the repairs were being undertaken and an electronic transfer of the security deposit dated December 3, 2009;
- Written submissions from several witnesses for the tenants; and
- 23 photographs of the condition of the rental unit during the restorations.

The tenants acknowledged, in the hearing, that they did receive and accept the electronic transfer of \$650.00 sent by the landlord on December 3, 2009.

In their testimony, the tenants indicated that a flood had occurred due to a leak in an adjacent rental unit on October 22/23, 2009 and as a result the tenants found alternate and permanent accommodation on October 24, 2009 and moved the majority of their belongings out of this rental unit on October 25, 2009. The tenants confirmed that they gave verbal and written notice to the landlord as of October 24, 2009.

The tenants confirmed the landlord had offered for the tenants to not be responsible to pay rent while the restoration was underway. The tenants testified they did not have any friends or family they could stay with and so they found alternate permanent accommodation and provided the landlord with notice to end the tenancy effective October 31, 2009.

The landlord submitted that the tenants could not end the tenancy with the notice they had provided because they had a fixed term tenancy. The landlord had offered to compensate the tenants by not requiring the tenants to pay rent for the duration of the restoration. Restoration was complete on November 20, 2009.

The landlord's expectation was that the tenants would not pay rent for the full month of November 2009, even though the rental unit was available by the 20th. The last 11 days of November without rent would compensate the tenants for the last days of October after the flood.

The landlord re-rented the rental unit effective on December 1, 2009 and returned the deposit after the new tenancy began, as she felt that reflected a more accurate end date to the tenancy.

Analysis

Section 45 of the *Act* states a tenant cannot end a fixed term tenancy agreement earlier than the date specified in the tenancy agreement. The section goes on to say that if the landlord has failed to comply with a material term of the tenancy and has not corrected the situation within a reasonable period after the tenant gives written notice of the failure, the tenant may end the tenancy on a date other than the end date specified in the tenancy agreement.

I find the tenants did not provide the landlord with a notice to end the tenancy that complied with Section 45 and therefore would remain responsible for rent until the end of the tenancy agreement. As the landlord was able to re-rent the rental unit by December 1, 2009, I find that the tenants no longer had any obligations under their agreement, thus ending the tenancy from that date forward.

Section 38 of the *Act* requires a landlord to return a security deposit within 15 days of the end of the tenancy and the date the landlord receives the tenants' forwarding address. The tenants provided their forwarding address on October 28, 2009 but the tenancy did not end until December 1, 2009. As the landlord returned the tenants' security deposit on December 3, 2009 I find the landlord is compliant with Section 38.

While the parties disputed whether or not the rental unit was liveable, they had agreed that the tenants should be compensated for the period that the restoration took place. As the tenancy was still in effect for the full month of November 2009, I find that the landlord's compensation of no rent for the full month of November 2009 reasonably compensates the tenants for the final days of October and up to November 20, 2009.

Conclusion

Based on my findings above, I dismiss the tenants' application in its entirety, 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: March 05, 2010.

Dispute Resolution Officer