

DECISION

Dispute Codes CNR, MNDC, MNSD

Introduction

This hearing dealt with the tenant's Application for Dispute Resolution to cancel a notice to end tenancy and for a monetary order.

The hearing was conducted via teleconference and was attended by both landlords and both tenants.

Issues(s) to be Decided

The issues to be decided are whether the tenants are entitled to cancel a 10 Day Notice to End Tenancy for unpaid rent; and to a monetary order for all or part of the pet damage deposit, pursuant to sections 18, 19, 20, 38, 46, 67, and 72 of the *Residential Tenancy Act (Act)*.

Background and Evidence

The tenant submitted into evidence the following documents:

- A copy of an undated 10 Day Notice to End Tenancy for Unpaid Rent with an effective date of March 10, 2010 citing \$1,584.24 in unpaid rent. The notice did not include the address of the rental unit; and
- A copy of a tenancy agreement that was signed by the landlords on June 10, 2009 but not signed by the tenants, including 2 addendums, originally signed by the tenant on June 11, 2008.

The landlord submitted the following documents into evidence:

- A tenancy agreement signed by the parties on June 11, 2008 for a 1 year fixed term tenancy beginning on July 1, 2008 that converted to a month to month tenancy on July 1, 2009 for a monthly rent of \$1,350.00 with a security deposit of \$675.00 paid on June 11, 2008 and no pet damage deposit paid. This tenancy agreement has attached two addendums signed by the tenant one of which agrees to an additional amount of rent of \$100.00 per month as a result of having a pet;
- A summary statement from the respondent landlord outlining their case and details of the tenancy; and
- A listing of dates that rent had been received late by the landlords since January 2009.

Both parties confirmed that there were no rental arrears at the time of the hearing. The landlord confirmed the tenants had paid the amount owing for February 2010 on March 2, 2010 and the amounts owed for March 2010 on March 12, 2010.

The landlord's testified that they felt the additional rent of \$100.00 per month for having a pet constituted a pet damage deposit and that as per Section 19 and 20 of the Act the landlord was not allowed to collect a monthly pet damage deposit.

The landlord testified that Sections 19 and 20 do not apply as they had not collected a pet damage deposit but rather were collecting additional rent as a result of the tenants having a pet.

Analysis

Section 52 of the Act requires a landlord, when issuing a notice to end tenancy under Section 46, to provide the tenants with a notice in writing that must be signed and dated by the landlord and provides the address of the rental unit. As the notice provided by the landlord was not dated nor did it provide the address of the rental, I find the notice to be ineffective.

The definition of a pet damage deposit under the *Act* is: "money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for damage to residential property caused by a pet." The *Act* also defines rent as: "money paid or agreed to be paid, or value or a right given or agreed to be given, by or on behalf of a tenant to a landlord in return for the right to possess a rental unit, for the use of common areas and for services and facilities, but does not include a pet damage deposit"

The addendum to the tenancy agreement clearly describes the \$100.00 per month as "additional rent" and nowhere includes a clause identify the amount will be held as security against any damage caused by the pet. The *Act* does not prohibit a landlord from charging an additional rent amount because the tenants have a pet.

In the absence of a prohibition in the *Act* from charging additional rent to a tenant for having a pet and based on the agreement reached by both parties prior to the start of the tenancy the landlord is entitled to monies paid by the tenants for the amount of rent outlined in the tenancy agreement.

Conclusion

Based on my finding above that the 10 Day Notice to End Tenancy for Unpaid rent was ineffective, I find the tenancy to be in full force and effect.

In addition, I dismiss the tenant's application for a monetary order for return of a pet damage deposit.

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 19, 2010.

Dispute Resolution Officer