Dispute Resolution Services

Residential Tenancy Branch
Ministry of Housing and Social Development

DECISION

<u>Dispute Codes</u>   MNSD, MND, OLC, FF

Introduction

This hearing dealt with an application by the landlords for an order permitting them to retain the security deposit and a cross-application by the tenants for an order for the return of the security deposit and other expenses.

Prior to the hearing the landlord D.J.H. made a written request that the hearing be adjourned as he was unable to participate. The landlords were represented at the hearing by X.L. who confirmed that she was authorized to advance the landlords' claim. The request for an adjournment was considered to have been withdrawn and the hearing proceeded.

Issues to be Decided

Which party is entitled to the security deposit?
Are the tenants entitled to recover other expenses?

Background and Evidence

The rental unit was rented at a monthly rate of $1,800.00. The tenants paid a $900.00 security deposit. The parties agreed that on May 10, 2010 the tenants gave the landlord notice that they would be vacating the rental unit in one month.

The tenants testified that on May 29, the day they and the landlord conducted the move-out condition inspection, they agreed to pay rent for the month of June and gave the landlord a cheque for $900.00 and agreed that he could retain the security deposit. The

tenants returned to the unit several hours after vacating to search for a lost pet and discovered that another tenant was moving into the rental unit. The tenants stopped payment on their $900.00 cheque and asked the landlord to return their security deposit. The tenants took the position that they did not give notice to end the tenancy for May 31, but rather it was to be effective on June 30.

The landlords' agent took the position that the tenants' notice took effect on May 31 and that although the landlords did not lose rental income for the month of June, the landlords missed time from work because they had to show the rental unit on weekdays rather than weekends.

The landlords seek to retain the security deposit to compensate them for the time they took away from work and the tenants seek the return of their deposit as well as the cost to send their forwarding address to the landlord via registered mail and the $12.50 paid to stop the $900.00 cheque. Both parties seek to recover the filing fee paid to bring their applications.

Analysis

While the tenants may have intended to end the tenancy in mid-June, as is indicated by the email exchange between the parties, it is clear that the landlords insisted that the notice would not be effective until June 30. The landlords insisted on strict compliance with the Act and therefore had until June 30 to show the rental unit. The landlords are not entitled to receive rent from two parties for the month of June. I find that the landlords could have arranged to show the unit on weekends in June, but chose instead to show the unit during the week in May. The tenants cannot be held responsible for any lost wages resulting from that choice. The landlords' claim is dismissed.

I find that the tenants are entitled to recover the security deposit and I award the tenants $900.00. I further find that the tenants are entitled to recover the $12.50 paid to stop the cheque that the landlords had no right to collect and I award the tenants $12.50. There is no reason why the landlords should be responsible for the cost of the tenants serving their forwarding address and I dismiss the claim to recover the cost of registered

mail. I find that the tenants are entitled to recover the $50.00 filing fee and I award the tenants $50.00.

Conclusion

The landlords' claim is dismissed in its entirety. The tenants are awarded $962.50. I grant the tenants a monetary order under section 67 for that sum. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Dated: November 01, 2010

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Dispute Resolution Officer