



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD and FF

Introduction

This application was brought by the landlord on December 13, 2010 seeking a monetary award for loss or damages under the legislation or rental agreement and authorization to retain the security and pet damage deposits in set off against the amount found to be owed. The landlord also sought to recover the filing fee for this proceeding.

Issues to be Decided

This matter requires a decision on whether the landlord is entitled to monetary compensation for the claimed loss and whether he may apply the security and pet damage deposits to the claimed loss.

Background, Evidence and Analysis

This tenancy was set to begin on December 1, 2010 under a fixed term rental agreement stated to conclude in 13 months, but erroneously setting an end of tenancy date of January 31, 2011. Rent was to be \$900 per month.

The tenants had viewed the rental unit on a Craigslist on-line advertisement. On November 21, 2010, a family member of the out-of-town tenants viewed the rental unit on their behalf and paid security and pet damage deposits of \$450 each. While no receipt was issued, the parties concur that the total of \$900 was paid to the landlord.

The tenants signed the rental agreement on November 30, 2010 and provided the landlord with 12 post-dated rent cheques.

The tenant's subsequently viewed the rental unit and, noting a number of deficiencies, decided not to proceed with the tenancy. The landlord stated that he had promised the tenants that the deficiencies, a result of renovation, would be remedied expeditiously. The landlord gave evidence that, after receiving the deposits, he removed the advertisement from Craigslist and as a result, he had not been able to find new tenants for December or January.

Analysis

Section 7 of the *Act* provides that if either party to a rental agreement suffers a loss due to the non-compliance of the other with the legislation or rental agreement, the non-compliant party must compensate the aggrieved party for the loss.

In this matter, I find that a contract had been made at the time of payment of the security and pet damage deposits and that the tenants were in breach of that contract by not proceeding with the tenancy. Therefore, I find that the tenants are responsible for the landlord's loss of rent for December 2010 as claimed.

Section 72(2) of the *Act* provides that:

If the director orders a party to a dispute resolution proceeding to pay any amount to the other, including an amount under subsection (1), the amount may be deducted

(a) in the case of payment from a landlord to a tenant, from any rent due to the landlord, and

(b) in the case of payment from a tenant to a landlord, from any security deposit or pet damage deposit due to the tenant

Accordingly, **I hereby authorize and order** that the landlord may retain the security and pet damage deposits paid on November 21, 2010 totalling \$900 may be retained in set off against the \$900 loss of rent for December 2010.

Given that I find that the landlord contributed to this loss in small part by way of failing to point out the deficiencies cited by the tenants during the viewing of the rental unit or in the on-line advertisement, I decline to award the filing fee for this proceeding.

Conclusion

The landlord is authorized to retain the security and pet damage deposits totalling \$900 against loss of rent for December 2010.

The filing fee for this proceeding remains with the landlord.

April 18, 2011