



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing was convened by way of conference call to deal with the landlord's application for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit, and to recover the filing fee from the tenant for the cost of this application.

The tenant and an agent for the landlord company both attended the conference call hearing, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. All evidence and testimony provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to an order permitting the landlord to retain all or part of the pet damage deposit or security deposit?

Background and Evidence

The parties agree that this month-to-month tenancy began on May 15, 2010 and ended on January 31, 2011. Rent in the amount of \$700.00 per month was payable in advance on the 1st day of each month, and the landlord collected a pro-rated amount of rent for the first month of the tenancy. The landlord also collected a security deposit from the tenant in the amount of \$350.00 on May 15, 2010. No pet damage deposit was collected.

The landlord's agent testified that he saw the tenant on January 1, 2011 to discuss an accident in the underground parking with the car of a guest of the tenant. The gate had closed on the vehicle and damaged the windshield. After the landlord's agent dealt with the mishap, he went back to his unit within the complex, and went to Vancouver. Upon his return 3 days later, he found a note that had been placed under the door of his unit

from the tenant indicating her intention to vacate the rental unit. He stated that the tenant had not mentioned moving when they met in the underground parking area.

The landlord's agent further testified that he had a waiting list and called another perspective tenant, who was not able to leave her current tenancy because she was required to give notice to her current landlord. He advertised the unit on Craig's List and in a local newspaper, but was not able to provide any dates of when those advertisements ran. He further testified that the unit was advertised for \$680.00 per month because the market rent had decreased.

The landlord has not applied for a monetary order for a month's rent, but only to keep the security deposit in partial satisfaction of the claim, and to recover the \$50.00 filing fee.

The tenant testified that on January 1, 2011 when she met with the landlord's agent in the underground parking area she told him that she was moving at the end of January and that she would be delivering notice that evening. She also testified that the van involved in the mishap in the underground parking area had a number of boxes in it which contained some of her belongings, and her friends were there to assist her with moving into her new rental unit. When she went to give the landlord's agent her written notice to vacate, his lights were out, and since he works nights, she didn't want to disturb him so she slid the note under his door with 2 rent cheques; one for January 1, 2011 and another for the 15th, being half a month's rent for each for the month of January.

On January 9, 2011 the tenant received Instructions to Vacate from the landlord's agent. She did a partial cleaning and was moved out by January 15, 2011, and hired cleaners to do a more thorough job on January 24, 2011. The apartment was empty on the 15th, and the landlord did not show the unit to any perspective renters. Further, the landlord did not mention to her anything about requiring another month's rent.

On February 21, 2011 the tenant received the Landlord's Application for Dispute Resolution by registered mail which was the first she had heard that the landlord wanted to keep the security deposit.

The tenant also testified that there is a shortage of rental properties and it should not have been difficult to rent the unit and believes the landlord's agent didn't try. She stated he works nights and sleeps during the day. During cross examination the tenant was asked that if she was moved out by January 15, 2011 how would she know that the landlord didn't show the unit to perspective renters, to which she replied that she had paid the rent for the month of January, which gave her possession till the end of the

month, and the landlord would have been required to give her notice to enter the suite. The landlord did not contact the tenant about showing the suite. She further stated that low income rentals are hard to find and landlords are going through lists to pick and choose tenants, including this landlord who has a waiting list.

In rebuttal, the landlord's agent testified that there used to be an abundance of renters, but in today's market there are not.

Analysis

The *Residential Tenancy Act* is clear about ending a tenancy. A tenant is required to give notice to end a month-to-month tenancy in writing no later than the day before the day in the month that rent is payable under the tenancy agreement. In this case, rent is payable on the 1st day of each month, and the tenant did not give her notice until the 1st of January.

The *Act* also states that:

7 (2) A landlord or tenant who claims compensation for damage or loss that results from the other's non-compliance with this Act, the regulations or their tenancy agreement must do whatever is reasonable to minimize the damage or loss.

The landlord was not able to provide conclusive evidence that he mitigated any loss. His evidence is that the market is such that it's not difficult for a tenant to find a rental unit, and that it's now more difficult now for a landlord to find a tenant. However, the landlord's agent provided no evidence of advertising the unit for rent, other than his verbal testimony, which I accept, but he was not able to provide any dates that the unit was advertised. Therefore, I cannot find that the landlord has complied with Section 7.

Conclusion

For the reasons set out above, the landlord's application is hereby dismissed without leave to reapply.

I further order the landlord to return the security deposit and interest to the tenant in accordance with Section 38 of the *Act*. The landlord is also required to return the security deposit within 15 days, and I direct that the 15 day period commence with May 6, 2011.

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: May 05, 2011.

Residential Tenancy Branch