



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with cross application by the tenants and landlord. The application by the tenants is for return of the security deposit, other and recovery of the filing fee. The application by the landlord is to keep all or part of the security deposit, money owed or compensation for damage or loss and recovery of the filing fee. Both parties participated in the conference call hearing and gave affirmed testimony.

Issue(s) to be Decided

Is either party entitled to any of the above under the Act.

Background and Evidence

This 3 year tenancy ended April 30, 2011 after the tenants provided the landlord with notice to vacate on April 1, 2011.

At the start of the hearing it was clarified for the parties that as the landlord had made his application on May 11, 2011, the landlord was in compliance with the 15 day timeline outlined in section 38 (1) of the *Act* therefore the landlord's May 11, 2011 application removes the eligibility of return of double the security deposit.

The landlord testified that the rental unit had been advertised in a local newspaper and on the internet and that he initially had no response to the ads. The landlord stated that he was able to secure new tenants for June 1, 2011 however he did suffer a \$1250.00 loss of income for the month of May 2011. The landlord stated that he had re-rented the apartment for \$1280.00 per month and that he had raised the rent by \$30.00 per month as the tenants had never had a rent increase during their 3 year tenancy.

The landlord stated that he is not claiming any damages or cleaning costs and that he is willing to not claim the \$251.16 in advertising fees and simply claim the \$1250.00 loss of rental income.

The tenants testified that they were aware that they had not provided the landlord proper notice per the *Act*. The tenants stated that they offered to have the landlord keep their \$security deposit in lieu of the May rent and had also offered to vacate by

April 15, 2011. The tenants stated that they do not believe that the landlord took appropriate steps to mitigate his loss as the landlord did not advertise the rental unit until April 6, 2011.

The tenants stated that they had attempted to help the landlord find prospective tenants by placing an ad on the internet but that the landlord refused to come and pick up the two applications they received from prospective tenants. The landlord responded by stating that he had asked the tenants by phone for the names and contact information of the prospective tenants but that they had refused to provide him with it.

Analysis

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the landlord has met the burden of proving that they have grounds for entitlement to a monetary order for loss of rental income.

The tenants acknowledged that they did not provide the landlord proper notice per section 45 of the *Act*. I find that the landlord did take reasonable steps to re-rent the property and do not believe that the \$30.00 increase in rent was significant enough to have limited the landlord's ability to procure new tenants in a timely manner. And while the tenants did offer the landlord their \$625.00 security deposit, the landlord by no means had to accept this offer as the landlord suffered a loss of \$1250.00 for the month of May 2011.

As stated in his testimony the landlord is willing to forego his claim to advertising costs, therefore this portion of the landlord's application is dismissed. I find that the landlord has established a claim of \$1250.00 and the landlord is awarded a monetary award for this amount.

As the landlord has been successful in their application the landlord is entitled to recovery of the \$50.00 filing fee.

Residential Tenancy Act **Section 45 Tenant's notice** speaks to:

(1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Residential Tenancy Policy Guideline 5. speaks to the "Duty to Minimize Loss," and provides in part as follows:

The Legislation requires the party seeking damages to show that reasonable efforts were made to reduce or prevent the loss claimed. The arbitrator may require evidence such as receipts and estimates for repairs or advertising receipts to prove mitigation.

Claims for loss of rental income

In circumstances where the tenant ends the tenancy agreement contrary to the provisions of the Legislation, the landlord claiming loss of rental income must make reasonable efforts to re-rent the rental unit or site at a reasonably economic rent.

Based on the documentary evidence and testimony of the parties, I find on a balance of probabilities that the tenants have not met the burden of proving that they have grounds for entitlement to a monetary order for return of double the security deposit. The landlord made claim against the security deposit on May 11, 2011 or 10 days after the tenancy ended on April 30, 2011 which is in compliance with the Act. The tenant's application is therefore dismissed without leave to reapply.

Residential Tenancy Act Section 38 Return of security deposit and pet damage deposit speaks to:

- (1) *Except as provided in subsection (3) or (4) (a), within 15 days after the later of*
- (a) the date the tenancy ends, and*
 - (b) the date the landlord receives the tenant's forwarding address in writing,*
the landlord must do one of the following:
 - (c) repay, as provided in subsection (8), any security deposit or pet damage deposit to the tenant with interest calculated in accordance with the regulations;*
 - (d) make an application for dispute resolution claiming against the security deposit or pet damage deposit.*

As the tenants have not been successful in their application the tenants are not entitled to recovery of the \$50.00 filing fee.

Conclusion

The tenants application is dismissed in its entirety.

I find that the landlord has established a monetary claim for \$1250.00 in loss of rental income. The landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord pursuant to s. 38(4) of the Act to keep the tenant's \$625.00 security deposit and \$8.58 in interest in partial satisfaction of the claim and I grant the landlord a monetary order under section 67 for the balance due of **\$666.42**.

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: August 22, 2011.

Residential Tenancy Branch