



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord for a monetary order for unpaid rent or utilities and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit. An agent for the landlord company and one of the tenants attended, gave affirmed testimony, and were given the opportunity to cross examine each other on their evidence. The other named tenant did not attend and no evidence was lead by the landlord's agent to prove that that tenant had been served with the Landlord's Application for Dispute Resolution or notice of hearing documents. All evidence and testimony has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for unpaid rent or utilities?

Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

This fixed-term tenancy began on August 1, 2010 and was to expire on July 31, 2011. Rent in the amount of \$1,200.00 per month was payable in advance on the 1st day of each month. On August 1, 2010 the tenants also paid the landlord a security deposit in the amount of \$600.00.

The landlord's agent testified that the tenants wanted out of the lease 2 months early, or on May 31, 2011 and the landlord's agent explained that the tenants would have to find another tenant. A new tenant applied for tenancy but the new tenants wanted to move in earlier than June 1, 2011 so the new tenancy did not commence.

The tenants vacated the rental unit on May 31, 2011 and a move-out condition inspection was completed. The landlord claims 2 month's rent from the tenants for early termination of the lease.

During cross examination, the landlord's agent testified that he had no knowledge of whether or not new tenants had signed a lease but stated that the new tenant was approved. Also, when questioned about advertising the unit for rent, the landlord's agent stated that an advertisement was placed on Kijiji and on Craig's List on June 1, 2011 but provided no evidence of that. The agent further testified that and advertisement was placed in the local newspaper and advertisements run for units continually, and specifically on June 1, 2011 and weekly thereafter, but again provided no evidence to substantiate that testimony.

The tenant testified that the landlord's agent was told that the tenants wanted to move June 1, 2011. The tenants wanted to sub-let the unit but the landlord's agent advised them that they would have to find a tenant who would sign a one year lease instead of the balance of the term, being 2 months. The tenants advertised the unit for rent stating that it would be available June 1, 2011. New perspective tenants gave an application to the landlord, and the tenants called the landlord's office 3 times leaving messages, but no return call was received. On the 4th call to the landlord, the tenants were told that new tenants were approved. Then on April 29, 2011 the landlord's agent called the tenants asking to schedule a move-out condition inspection because new tenants were moving in on May 1, 2011. The tenants contacted the new tenants who advised that June 1, 2011 was an acceptable move-in date for them.

On May 17, 2011 the landlord's agents called the tenants again stating that the new tenants were not moving in. The tenant called the new tenant who advised that the landlord's agents would not return calls, they were unorganized and unprofessional and since their calls were not returned, they found a new place to live.

The tenants in this case had already signed a fixed term tenancy agreement in a new location on May 15, 2011. The move-out condition inspection took place on May 31, 2011 and the landlord's agent returned the 2 post-dated cheques to the tenants that were for June and July's rent and were told to get a closing statement from the City to prove that utilities had been paid and then the security deposit would be returned. They complied, and subsequently called the landlord's agent to enquire about the security deposit and were advised that it was being withheld, but with no explanation.

When asked if the tenants received written consent from the landlord to sub-let the unit, the tenant responded that the landlord accepted a new tenant for the unit by approving the application and therefore written consent of the landlord was not required.

Analysis

With respect to the landlord's claim against both named tenants, I have no evidence before me that the tenant who did not attend was aware of the application or the hearing date. Therefore, the landlord's application as against that tenant cannot succeed.

In the evidence before me, I am satisfied that the tenancy ended on May 31, 2011, and the Landlord's Application for Dispute Resolution was filed on June 14, 2011.

Therefore, I find that the landlord has complied with Section 38 of the *Residential Tenancy Act* by filing an application claiming against the security deposit within 15 days of the date the tenancy ended or the date the tenants provided a forwarding address in writing.

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.

In this case, the landlord testified that advertisements were placed on electronic posting boards and in a local newspaper, but did not provide any evidence to support that testimony. Further, the landlord's agent was unable to provide any evidence or testimony of whether or not a lease had been signed by the new tenants. The tenant testified that when attempting to contact the landlord's agent, calls were not returned. The tenant further testified that upon speaking to the new tenants the tenant learned that the landlord's agents did not return calls. Therefore, I must find that the landlord has failed to prove that section 7 has been complied with, and the landlord's application cannot succeed.

Conclusion

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

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: September 22, 2011.

Residential Tenancy Branch