



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This matter dealt with an application by the Landlord for compensation for a loss of rental income, to recover the filing fee for this proceeding and to keep the Tenants' security deposit in partial payment of those amounts.

Issue(s) to be Decided

1. Is the Landlord entitled to be compensated for a loss of rental income and if so, how much?
2. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy was supposed to start on August 1, 2011 for a one year fixed term at a rental rate of \$1,600.00 per month. The Parties agree that the Tenants responded to an advertisement in an online publication and viewed the rental unit on June 29, 2011. The Tenants completed an application and submitted it by e-mail to the Landlord. At that time, the Tenants also asked the Landlord to let them know as soon as possible if their application was approved so that they could give notice ending their current tenancy. On June 30, 2011, the Landlord advised the Tenants that their application was approved and that they would have to pay a security deposit of \$800.00 to secure the rental unit. The Tenants said the Landlord called them back the same day and asked them if they had a pet. The Tenants advised the Landlord that they had a dog and the Landlord said she would have to check with the owners to see if they would allow a dog.

The Tenants said they did not hear back from the Landlord until July 6, 2011 after they had already paid the security deposit and at that time, the Landlord told the Tenants that the owners would allow a dog provided that they paid an \$800.00 pet damage deposit. The Tenants said they agreed to pay the pet damage deposit but did not have the resources to pay it so the Landlord agreed to accept two instalments of \$400.00. The Tenants told the Landlord on July 11, 2011 that they would drop off a signed copy of the tenancy agreement and the first instalment of the pet deposit but they did not do so. The Tenants also agreed to meet with the owners of the rental property on July 12, 2011 but did not do so. Instead on July 13, 2011 the Tenants sent the Landlord an e-mail saying they would not be taking the rental unit and they asked to have their security deposit returned.

The Tenants argued that there was no tenancy agreement in place because they did not sign a copy of a written tenancy agreement. The Tenants also argued that if there was a verbal tenancy agreement in place, the Landlord changed the terms of that agreement after they paid a security deposit by requiring a pet deposit and they did not agree to that term. The Landlord argued that Tenants entered into an agreement to rent the rental unit when they paid the security deposit. The Landlord also argued that the Tenants agreed to pay a pet deposit after paying the security deposit, but later changed their minds. As a result, the Landlord claimed she was unable to re-rent the rental unit until September 2011 and lost rental income for August 2011.

Analysis

Although the Tenants did not sign the copy of the written tenancy agreement provided by the Landlord, I find that the Parties did enter into a verbal tenancy agreement when they paid the security deposit. The Parties agreed that nothing was mentioned about pets either in the Landlord's advertising or on the rental application. For this reason, I find that as of July 4, 2011, the payment of a pet deposit was not a term of the tenancy agreement and the Tenants could have rescinded the tenancy agreement if they did not agree to the Landlord's later requirement to pay one.

However, I find that the Tenants also agreed to pay a pet damage deposit. I find that on or about July 6, 2011, the Tenants agreed to pay the pet deposit in two instalments with the first instalment to be paid on July 11, 2011 and the second instalment by the end of the first month of the tenancy. Although the Tenants claimed that they agreed to meet the owners on July 12, 2011 in the hope of negotiating a reduced pet deposit, the Tenants also admitted that by July 12, 2011 they realized they would not be able to raise the funds for the pet deposit (within the time limit set by the Landlord).

Consequently, I find that the Parties entered into a verbal tenancy agreement for a one year fixed term commencing August 1, 2011 at a rental rate of \$1,600.00 per month with the requirement to pay a security deposit of \$800.00 and a pet deposit of \$800.00. I also find that the Tenants ended this tenancy early when they advised the Landlord on July 13, 2011 that they would not be renting the rental unit.

Section 45(2) of the Act says that a tenant of a fixed term tenancy cannot end the tenancy earlier than the date set out in the tenancy agreement as the last day of the tenancy. If a tenant ends a tenancy earlier, they may have to compensate the landlord for a loss of rental income that he incurs as a result. Section 7(2) of the Act states that a party who suffers damages must do whatever is reasonable to minimize their losses. This means that a landlord must try to re-rent a rental unit as soon as possible to minimize a loss of rental income.

The Landlord said that after she received the Tenants' e-mail on July 13, 2011, she re-posted her advertisement in an online publication which the Tenants confirmed. The

Landlord said she was unable to re-rent the rental unit for August 2011 (which she believed was likely due to the need of many tenants to give one month's notice). In the absence of any evidence from the Tenants to the contrary, I find that the Landlord took reasonable steps to re-rent the rental unit and is entitled to be compensated for a loss of rental income of \$1,600.00 for August 2011.

As the Landlord has been successful in this matter, she is also entitled pursuant to s. 72(1) of the Act to recover from the Tenants the \$50.00 filing fee she paid for this proceeding. I Order the Landlord pursuant to s. 38(4) of the Act to keep the Tenants' security deposit of \$800.00 in partial payment of the monetary award. The Landlord will receive a Monetary Order for the balance owing of \$850.00.

Conclusion

A Monetary Order in the amount of **\$850.00** has been issued to the Landlord and a copy of it must be served on the Tenants. If the amount is not paid by the Tenants, the Order may be filed in the Provincial (Small Claims) Court of British Columbia and enforced as an Order of that Court.

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: November 01, 2011.

Residential Tenancy Branch