



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR FF O MNDC MNSD FF

Introduction

This hearing dealt with applications by the landlord and the tenants. The landlord applied for monetary compensation for unpaid rent. The tenants applied for double recovery of their pet and security deposits. Both landlords and both tenants participated in the teleconference hearing.

I have reviewed all evidence before me that met the requirements of the rules of procedure. However, only the evidence relevant to the issues and findings in this matter are described in this decision.

Issue(s) to be Decided

Is the landlord entitled to lost revenue for June 2011?

Are the tenants entitled to double recovery of their security deposit?

Background and Evidence

The tenancy began on December 1, 2007. At the outset of the tenancy, the landlord received from the tenants a security deposit of \$615 and a pet deposit of \$310. The monthly rent was \$1230. The tenancy ended in May 2011.

Landlord's Application

The landlord stated that on April 8, 2011 the tenants informed the landlord by email that they would be moving out of the rental unit by May 8, 2011. The landlord asked the tenants to provide their notice in writing, but the tenants did not do so. There was some back-and-forth discussion, but the landlord was not sure when the tenants were going to move out, so they could not rent out the unit for June. The landlord believed the tenants vacated on May 2 or 3, 2011. The landlord took no steps to re-rent the unit, because they decided to instead sell the unit.

The tenants' response was that they thought email was sufficient notice. The tenants agreed to pay for May 2011 rent. The landlord knew on April 8, 2011 that the tenants were moving out, and they should have been able to re-rent it. The landlord's agents showed up on May 2, 2011 to do the move-out inspection with the tenants, so the landlord was aware that the tenants had vacated by May 2, 2011.

Tenants' Application

The tenants stated that the landlord did not give the tenants a copy of the move-out inspection report, as required, and therefore the landlord's right to claim against the security and pet deposits was extinguished. It is on that basis that the tenants claim double recovery of their pet and security deposits.

The landlord's evidence showed that the landlord and tenants agreed that the landlord could keep the pet and security deposits as partial payment of rent for May 2011.

Analysis

Upon consideration of the evidence, I find as follows.

The landlord is not entitled to lost revenue for June 2011. The landlord knew by April 8, 2011 that the tenants intended to move out in early May 2011. Moreover, it was clear that the tenants had vacated the rental unit by May 2, 2011, when the landlord's agents and the tenants conducted the move-out inspection. Under section 44 of the Act, one of the ways that a tenancy ends is that the tenants vacate the rental unit. As soon as a landlord is aware that a tenant is moving out, the landlord then has a duty to mitigate, or reduce, any potential lost revenue by taking all reasonable steps to re-rent the unit as soon as possible. In this case, the landlord took no steps to re-rent, and they are therefore not entitled to lost revenue for June 2011.

The tenants are not entitled to double recovery of their security and pet deposits. If a landlord fails to give the tenants a copy of a move-in or move-out inspection report, the landlord's right to make a claim against the security deposit for damage to the rental property, or against the pet deposit for damage done by a pet, is extinguished. However, even if a landlord's right to make a claim against the deposits for damage or pet damage is extinguished, the landlord still holds the deposits in trust and they may be used for other lawful purposes, such as applying them against unpaid rent. In this case, the landlord and tenants agreed that the landlord may keep the pet and security deposits as partial payment of rent for May 2011. I therefore find that the pet and

security deposits have already been allocated, and the tenants are not entitled to recovery of the deposits.

As neither application was successful, neither party is entitled to recovery of their respective filing fees.

Conclusion

The application of the landlord and the application of the tenants are dismissed.

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 15, 2011.

Residential Tenancy Branch