



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MND, MNR, MNSD, FF

This hearing was convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the “Act”) for Orders as follows:

1. A Monetary Order for unpaid rent - Section 67;
2. A Monetary Order for damage to the unit – Section 67;
3. An Order to retain the security deposit - Section 38; and
4. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenants were each given full opportunity to be heard, to present evidence and to make submissions.

Preliminary Matter

During the Hearing, the Tenants stated that the application for dispute resolution was not served on them at their new address and only found out about the Hearing when driving past the unit address while taking their child to the nearby school. They noted that the mail delivery person was knocking on the door and upon informing the postal worker that they were the previous residents, the postal worker had the Tenants sign for receipt of the registered mail. Further, the Tenants state that they did not receive any copies of the evidence, such as the photos referred to by the Landlord and filed by the Landlord to support the claim. The Tenants state that the Landlord had their forwarding address and also knew where the one Tenant worked. The Landlord agrees that the Tenants were served at the old address with both the application and the evidence but disagrees that he had the Tenants forwarding address. The Landlord did not deny knowing where one of the Tenants worked.

Section 3.5 of the Residential Tenancy Branch Rules of Procedure requires that any photos upon which an applicant intends to rely upon as evidence at a hearing must be served on the respondents. Section 88 of the Act provides that evidence that must be

served on a party must be served, inter alia, in person or by mail to *the address at which the person resides*. As the Landlord served the photo evidence to the dispute address, I find that the Landlord did not serve the photos as required under the Act. Further, as the Landlord knew full well that the Tenants were not at this address, I find that the Landlord intentionally acted in a manner contrary to the Rules of Procedure and I therefore exclude the photos as evidence for the Hearing.

Issue(s) to be Decided

Is the Landlord entitled to the monetary amounts claimed?

Background and Evidence

The tenancy began on January 1, 2009. Rent in the amount of \$1,800.00 was payable in advance on the first day of each month. At the outset of the tenancy, the Landlord collected a security deposit from the Tenants in the amount of \$1,000.00. The Landlord states that the Tenants failed to provide one month's notice in writing to end the tenancy and that the Tenants vacated the unit on November 1, 2011. No move-in inspection was conducted at the beginning of the tenancy. The Landlord states that a move-out inspection was offered to the Tenants on November 1, 2011 and after no response, the Landlord did not offer any other opportunity. The Landlord states that he did not offer a second opportunity as he had no way to reach the Tenants.

The Landlord states that the failed to clean the unit, remove garbage and damaged the walls and a door of the unit. The Landlord states that due to the time required for cleaning and repairing the unit, the Landlord did not advertise the unit until the end of November 2011. The Landlord states that this advertisement was placed on a local website "Guestnet". The Landlord states that the unit has been rented for February 1, 2011. The Landlord claims two months lost rent in the amount of \$3,600.00 and \$3,000.00 for damages to the unit.

The Tenants state that the Landlord was provided their notice to end the tenancy on October 1, 2011 for an end date of October 31, 2011. The Tenants state that during the

tenancy Landlord had instructed the Tenants to send him any mail to the Tenant's own address. The Tenants state that they were not comfortable sending their notice to their own address and sent the text message instead. The Landlord, after several evasive responses, agreed that this text message was received by him on October 1, 2011.

The Tenants state that they texted the Landlord on October 26, 2011 to inform the Landlord that they had their belongings out of the unit but would return before the end of the month to clean and remove garbage. The Tenants state that the Landlord told the Tenants not to go back onto the property or they would be trespassing and not to contact the Landlord any further. The Tenants state that the Landlord instructed the Tenants to leave the keys at the unit and did not make any offers for a move-out inspection. The Tenant states that three months prior to sending their texted notice to end the tenancy, the Landlord had informed the Tenants that their rent would be raised by \$200.00 per month. The Tenants responded to the Landlord that if the Landlord did not attend to the many repairs required to the unit, the Tenants would be giving the Landlord notice to end the tenancy. The Tenants state that over the term of the tenancy, the Landlord failed to attend for any repairs and that on October 31, 2011 when the Tenants requested that the Landlord fix a drain, the Landlord told them to fix it themselves. Due to this response, the Tenants state that they gave notice to end the tenancy. The Tenants state that they saw the Landlord a week later and no problems were raised by the Landlord.

The Landlord denies receiving any message from the Tenants on October 26, 2011 and denies that he told the Tenants not to return to the unit on that date.

Analysis

Section 45 of the Act requires tenants to provide a month's notice to end a tenancy. Section 7 of the Act provides that where a tenant does not comply with the Act, regulation or tenancy agreement, the tenant must compensate the landlord for damage or loss that results. Given the undisputed evidence of the Parties that the Tenants provided their notice on October 1, 2011 to end the tenancy on October 31, 2011, and

given the Landlord's evidence that the unit was not advertised for rent until the end of November, 2011, I find that the Landlord failed to act to re-lease the unit and that any lost rental income was caused by the Landlord's own actions in not advertising the unit for rent.

In a claim for damage or loss under the Act, regulation or tenancy agreement, the party claiming costs for the damage or loss must prove, inter alia, that the damage or loss claimed was caused by the actions or neglect of the responding party and that costs for the damage or loss have been incurred or established. Given the evasive responses of the Landlord during the hearing, I accept the Tenant's evidence that they were instructed by the Landlord not to return to the unit and to not clean the unit prior to the end of the tenancy. Given these instructions, I find that the Tenants were unable to carry out the cleaning required and that the Landlord was therefore responsible for the state of the unit at the end of the tenancy. Accordingly, I dismiss the Landlord's application.

Conclusion

The Landlord's application is 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: February 10, 2012.

Residential Tenancy Branch