



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD MNDC FF

Introduction

This hearing dealt with applications by the landlord and the tenants. The landlord applied for a monetary order and an order to retain the security deposit in partial satisfaction of the claim. The tenants applied for double recovery of the security and pet deposits. Both landlords and both tenants participated in the conference call 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 monetary compensation as claimed?

Are the tenants entitled to double recovery of the security and pet deposits?

Background and Evidence

The tenancy began on September 1, 2011 as a fixed-term tenancy to end on August 31, 2012. Rent in the amount of \$800 was payable in advance on the first day of each month. At the outset of the tenancy, the tenants paid a security deposit of \$400 and a pet deposit of \$400. The landlord did not carry out a move-in inspection with the tenants. The tenancy ended on November 30, 2011. The landlord re-rented the unit beginning December 15, 2011.

Landlord's Evidence

The landlord has claimed lost revenue for the first half of December 2011, in the amount of \$400. The landlord did not receive the tenants' written notice to vacate the rental unit. The tenants paid their November 2011 rent in cash on November 1, 2011, when rent was due. The landlord's ex-wife often collected the tenants' rent.

The tenants gave the landlord verbal notice some time in late November 2011 that they would be moving out at the end of the month. The landlord attempted to contact the tenants to do a move-out inspection, but they never showed up. When the landlord viewed the rental unit there was substantial damage. The landlord provided a copy of a move-out inspection report for a move-out inspection he conducted without the tenants on December 1, 2011.

On December 2, 2011 the landlord sent a text message to the tenants requesting their forwarding address. The tenants texted back their forwarding address, and the landlord made his application to keep the deposits in compensation for lost revenue on December 14, 2011.

The landlord was unable to re-rent the unit until December 15, 2011. The landlord did not provide any evidence of his attempts to re-rent the unit.

Tenants' Evidence

On October 26, 2011 the tenants sent the landlord a text message informing him that they would be moving out at the end of November, and that they would give him their written notice and November's rent at the same time. On October 30, 2011 the tenants gave their written notice to vacate and their rent to the landlord's ex-wife. It was the tenants' practice to pay their rent on the last day of the month to the landlord's ex-wife. She did not give receipts for the rent paid. The tenants submitted a copy of their notice to vacate, dated October 30, 2011, in their evidence.

The landlord did not show up on November 30, 2011 for the move-out inspection. The tenants returned their keys and gave the landlord their written forwarding address on December 1, 2011.

Analysis

Upon consideration of the evidence, I find as follows.

Landlord's Claim for Lost Revenue

The landlord is not entitled to the lost revenue claimed. When a tenant pays rent in cash, the landlord or the landlord's agent is required to issue receipts. In the absence of supporting evidence from the landlord regarding the date that the tenants paid their rent for November 2011, I accept the evidence of the tenants that they paid their November rent and gave the landlord's agent their written notice to vacate on October 30, 2011. The landlord was therefore aware as of October 30, 2011 that the tenants intended to vacate the rental unit, and the landlord was required to minimize any rental loss by

taking reasonable steps to re-rent the unit as soon as possible. The landlord did not provide evidence of any steps he took to attempt to re-rent the unit.

The only evidence that the landlord provided of damage to the rental unit was the move-out inspection report for the inspection that the landlord completed in the absence of the tenants. The landlord did not provide evidence that he gave the tenants written notice of a final opportunity to carry out a move-out inspection, as required under the Act. The move-out inspection report that the landlord submitted is therefore of little or no evidentiary value. I find that the landlord did not provide sufficient evidence to support his claim that there was substantial damage to the rental unit that prevented him from re-renting the unit.

I therefore dismiss the landlord's claim for lost revenue.

Tenants' Claim for Double Recovery of Deposits

The tenants are not entitled to double recovery of the pet and security deposits. When a landlord fails to properly complete a condition inspection report, the landlord's claim against the security or pet deposits for damage to the property is extinguished. In this case, the landlord applied to keep the pet and security deposits in compensation of a monetary claim for lost revenue for lost revenue. As the landlord's claim was not for damage to the property, the landlord was entitled to apply to keep the deposits. The tenants stated that they gave the landlord their forwarding address on December 1, 2011, and the landlord made his application within 15 days of that date. The tenants are therefore not entitled to double recovery of the deposits, and I dismiss that portion of the tenants' application.

The tenants are entitled to recovery of the base amounts of their deposits.

Filing Fees

As the landlord's claim was not successful, they are not entitled to recovery of the \$50 filing fee for the cost of their application.

As the tenants' application was partially successful, they are entitled to partial recovery of their filing fee, in the amount of \$25.

Conclusion

The landlord's application is dismissed.

I grant the tenants an order under section 67 for the balance due of \$825. This order may be filed in the Small Claims Court 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: March 6, 2012.

Residential Tenancy Branch