



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This conference call hearing was convened in response to the landlord's application to keep the security deposit and to recover the filing fee associated with this application.

Both parties attended the hearing and provided affirmed testimony. They were given a full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the landlord entitled to keep all or part of the security deposit?

Is the landlord entitled to recover the filing fee?

Background and Evidence

The rental unit consists of the lower level of a single detached home. Pursuant to a sub-lease written agreement, the month to month tenancy started on December 1, 2011. The rent was \$900.00 per month and the tenant paid a security deposit of \$450.00.

The tenants testified that soon after moving in, they discovered that the rental unit was not legally registered with the City, that the owner landlord was not aware that they had rented the unit, and that the sub-let landlord had served them with a notice of rent increase within a time line that was not compliant with the Act.

They stated that for these reasons they gave their notice to end tenancy on January 30, 2012 and that they left the next day.

The sub-let landlord testified that he informed the owner landlord that he had found tenants, and agreed that he did not have a written approval. The sub-let landlord said that the tenants moved out, and that he had to pay the full rent for February 2012. He said that the owner landlord found new tenants starting March 1, 2012. The sub-let landlord said that he moved out at the end of February to avoid being caught in another sub-let situation.

Analysis

According to the evidence the tenants moved in December 2011. Although they discovered that the unit was not registered with the city, they were not ordered to move out and they could have likely stayed there longer.

I do not find that the tenants' concerns gave them sufficient reasons for not providing the landlord with a proper notice to end tenancy. A remedy for the tenants would have been to seek assistance through dispute resolution to resolve the issues with rent increase and the sub-let agreement, if the landlord failed to address them adequately. In this case the tenants chose to give the landlord notice on January 30th and to move out the next day rather than to serve a one month notice to end tenancy.

Section 45(1) of the Act states in part that a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that is not earlier than one month after the date the landlord received the notice.

I find that the landlord lost rental income for February 2012 and that he is entitled to recover that loss as claimed.

Conclusion

I find that the amount of the security deposit is an appropriate amount to compensate the landlord for the loss of rental income. Accordingly I authorize the landlord to keep \$450.00 in satisfaction of this claim, inclusive of the filing fee.

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 19, 2012.

Residential Tenancy Branch