



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNDC, MNSD; FF

Introduction

This is the Landlords' application for a Monetary Order for damage or loss under the Residential Tenancy Act; to retain the security deposit in satisfaction of their monetary claim; and to recover the cost of the filing fee from the Tenants.

The parties gave affirmed testimony at the Hearing.

The Landlord did not provide sufficient evidence that he had served the Tenant AF with the Notice of Hearing documents and the matter proceeded against the Tenant JF only. Tenants are jointly and severally responsible for debts and damages incurred under a tenancy and may proportion liability for any debt or damages between themselves. The Landlord's application against the Tenant AF is dismissed. The Hearing continued against the Tenant JF only.

Issues to be Decided

- Is the Landlord entitled to a Monetary Order against the Tenant JF for loss of revenue? If so, may the Landlord retain the security deposit in satisfaction of that loss?

Background and Evidence

The Landlord CC gave the following testimony and evidence:

The Tenants signed a tenancy agreement on December 29, 2011. A copy of the tenancy agreement was provided in evidence. The tenancy agreement is a term agreement, due to expire on January 31, 2013, with an option to renew.

The tenancy was to start on January 16, 2011, but the Landlords were prepared to give early possession. The rental unit was available of January 6, 2011. Monthly rent was \$2,200.00, due on the first day of each month. The Tenants paid a security deposit in the amount of \$1,100.00 and a pet damage deposit in the amount of \$1,100.00 on December 29, 2011.

On January 9, 2012, the Landlords received notice that the Tenants were not going to move into the rental unit. The Landlords provided a copy of the Tenants' notice to end the tenancy in evidence.

The Landlords advertised the rental unit on January 9, 2012, and were able to re-rent it effective February 1, 2012. The Landlords returned a portion of the security deposits in the amount of \$1,100.00 to the Tenants on February 1, 2012, and are seeking to retain the remaining \$1,100.00 in satisfaction of their claim. The Landlords withdrew their application for recovery of the cost of the filing fee.

The Tenant JF gave the following testimony:

The Tenant concurred with the Landlord's testimony. She stated that her daughter and her fiancé parted company and that her daughter and she could not afford the rental unit by themselves. She stated that she let the Landlords know as soon as possible.

Analysis

A tenancy agreement is a legally binding contract. I find that the Landlords made reasonable attempts to re-rent the rental unit as soon as possible after being advised that the Tenants would not be moving in. Based on the testimony of both parties, I find that the Landlords have established a monetary award for loss of revenue for January 16 – 31, 2012, in the total amount of \$1,100.00.

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlords may apply the residue of the security deposits in the amount of \$1,100.00 in full satisfaction of the Landlords' monetary claim.

Conclusion

Pursuant to the provisions of Section 72(2)(b) of the Act, the Landlords may apply the residue of the security deposits in the amount of \$1,100.00 in full satisfaction of the Landlords' monetary claim.

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