



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNR, FF

Introduction

This hearing was convened in response to applications by the landlords and the tenants.

The landlord's application is seeking orders as follows:

1. To keep all or part of the security deposit for unpaid rent?
2. To recover the cost of filing the application from the tenants?

The tenants' application is seeking an order as follows:

1. Return of all or part of the security deposit?

Both parties appeared, gave affirmed testimony and were provided the opportunity to present their evidence orally and in written and documentary form, and to cross-examine the other party, and make submissions at the hearing.

The parties confirmed receipt of all evidence submissions and there were no disputes in relation to review of the evidence submissions.

Issue(s) to be Decided

Is the landlord entitled to retain the security for unpaid rent?
Are the tenants entitled to the return of the security deposit?

Background and Evidence

The parties entered into a twelve month fixed term tenancy which began on May 1, 2011 and expired on April 30, 2012, thereafter the tenancy continued on a month-to-month basis. Rent in the amount of \$950.00 was payable on the first of each month. A security deposit of \$475.00 was paid by the tenants.

Landlords' application

The landlord's agent testified that the tenants did not provided proper notice to end tenancy. The landlord's agent stated they received written notice on June 1, 2012, from the tenants to end the tenancy on June 30, 2012. The landlord's agent stated on June

2, 2012, they advertised the rental unit on a popular local website at a reduced rate and were unable to rent the unit for July 2012.

The landlord's agent testified they are not seeking to recover the full amount of rent due, they are only seeking to retain the security to off-set their loss.

The tenant testified that on June 1, 2012, she provided written notice to end tenancy for June 30, 2012.

Tenants' application

The tenants stated the landlords have extinguished their rights to claim against the security deposit as a move-in and a move-out inspection was not completed and the landlord failed to return the security deposit within 15 days.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

To prove a loss and have one party pay for the loss requires the other party to prove four different elements:

- Proof that the damage or loss exists;
- Proof that the damage or loss occurred due to the actions or neglect of the Respondent in violation of the Act or agreement;
- Proof of the actual amount required to compensate for the claimed loss or to repair the damage; and
- Proof that the Applicant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

In this case, the both parties have the burden of proof to prove a violation of the Act and a corresponding loss.

Landlords' application

Section 45 of the Act states:

- 45 (1) A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that
- (a) is not earlier than one month after the date the landlord receives the notice, and
 - (b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this case, the tenancy is based on rent being paid on the first of each month. On June 1, 2012, the tenants provided written notice to end tenancy for June 30, 2012. The Act requires that notice is given prior to the day the tenancy is based on. As a result, I find the tenants have breached section 45 of the Act, as the earliest date the tenants could have legally ended the tenancy was July 31, 2012.

On June 2, 2012, the landlords advertised the unit for rent and the rent was advertised at a reduce rate. However, the unit was not rented for the month of July 2012, and the landlord suffered a loss. I find the landlords took reasonable steps to mitigate the loss and therefore entitled to be compensated for the loss of rent for the month of July 2012, in the amount payable under the terms of tenancy agreement. However, the landlords have waived their right to claim the full amount of unpaid rent (\$950.00) and only seek to retain the security deposit (\$475.00).

As a result, I order that the landlords retain the security deposit and interest of **\$475.00** in full satisfaction of the claim of unpaid rent.

As the landlords have been successful with their application, the landlords are entitled to recover the cost of filing the application from the tenants. I grant the landlords an order under section 67 of the Act in the amount of **\$50.00**. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that Court.

Tenants' application

In this case, the tenants believe the landlords have extinguished their rights to claim against the security deposit as the landlords failed to perform a move-in and move-out inspection.

However, the landlords have not made a claim for damages to the rental unit. The landlords' application is for unpaid rent and that application was made within 15 days of tenancy ending as required by the Act. I find the tenants have failed to prove that the landlords have violated the Act. Therefore, I dismiss the tenants' application.

Conclusion

I order the landlords to retain the security deposit in full satisfaction of unpaid rent. The landlords are granted a monetary for the cost of filing their application.

The tenants' 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: September 19, 2012.

Residential Tenancy Branch