



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, MNDC, MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for an Order of Possession for breach of an agreement and for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement.

The landlord and the tenant both attended the conference call hearing, both parties gave affirmed testimony, and the landlord provided evidentiary material in advance of the hearing, however not all of the evidence the landlord testified was provided has actually been received by me prior to the hearing.

During the course of the hearing, the landlord applied to amend the application to include an order permitting the landlord to keep all or part of the pet damage deposit or security deposit. The landlord testified that keeping the deposits was the whole purpose of the application, and pointed out that the application states that the landlord's claim is for \$1,500.00 and the landlord is willing to accept the deposits totalling \$1,350.00 in full satisfaction of the claim; the landlord simply missed putting a checkmark in the box on the application. The tenant opposed the amendment stating that there was no damage caused by a pet.

The *Residential Tenancy Act* states that if a landlord is entitled to retain an amount from a security deposit or pet damage deposit agreed to in writing by the tenant at the end of a tenancy or after the end of the tenancy the director orders that the landlord may retain the amount, a pet damage deposit may be used only for damage caused by a pet to the residential property, unless the tenant agrees otherwise. However, the *Act* also states that if the director orders a tenant to pay any amount to a landlord, the amount may be deducted from any security deposit or pet damage deposit due to the tenant. I have read the landlord's application and it is clear that the landlord intended to claim against the deposits, and therefore I allow the amendment.

The landlord also withdrew the application for an Order of Possession stating that the tenant moved out of the rental unit on September 30, 2012.

All evidence and testimony provided has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised with the exception of evidence that was not received by me prior to the hearing.

Issue(s) to be Decided

The issues remaining to be decided are:

- Has the landlord established a claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The parties agree that this tenancy began on June 15, 2012 for a fixed term to expire on June 15, 2013. Rent in the amount of \$1,350.00 per month was payable in advance on the 1st day of each month and the landlord collected a pro-rated amount of rent for the first month. On May 17, 2012 the landlord collected a security deposit from the tenant in the amount of \$675.00 and a pet damage deposit on June 15, 2012 in the amount of \$675.00. Both deposits are still held in trust by the landlord.

The landlord testified that the parties spoke on or about August 3, 2012 and the tenant told the landlord that the tenant had obtained work up north and would be ending the tenancy effective September 30, 2012. The tenant followed up with written notice on August 26, 2012 to vacate the rental unit on September 30, 2012 and the notice also contained the tenant's forwarding address.

The landlord advertised the rental unit on Craigslist, an on-line advertising website on August 3, 2012 for \$1,375.00 per month but received no responses. The landlord had a friend who worked for Rent it Furnished, and the landlord asked for assistance in re-renting the rental unit on August 13, 2012 because the landlord resided in Alberta. The property manager at that company advised that it should be advertised for \$1,200.00 per month in order to get it rented due to the local rental market. The landlord advertised from September 5, 2012 on Craigslist for \$1,200.00 per month and the property manager also advertised on their website starting on August 14, 2012. The rental unit was re-rented on September 9, 2012 for a tenancy to commence on October 1, 2012. The landlord claims the difference between \$1,350.00 and \$1,200.00 per

month for the months commencing with October 1, 2012 to the end of the fixed term, being June 15, 2013.

The tenant testified that the parties spoke on the phone prior to the tenant providing the landlord with written notice to vacate. The tenant told the landlord that the tenant was moving to Alberta and the landlord offered to reduce the rent to \$1,000.00 so that the tenant could afford the rent without assistance from another party who had also lived in the rental unit but had moved out. The tenant did not accept the landlord's offer but offered to assist the landlord in finding a new tenant for \$1,350.00 per month since the landlord lived in Alberta, but the landlord declined the tenant's offer. Then the landlord told the tenant that the landlord could not find a new tenant for \$1,375.00 per month, and eventually told the tenant that the rental unit rented for \$1,250.00 per month. If the tenant had known the landlord would reduce the rent, the tenant would have wanted to assist in finding a new tenant.

The tenant also testified that there was no damage caused by a pet and the tenant is opposed to the landlord's proposed amendment to the application. Further, there were no damages at all in the rental unit.

The tenant also testified that during one of the conversations between the parties, the landlord told the tenant that once a new tenant was secured and paid a security deposit, the landlord would return this tenant's security deposit. In that same conversation the landlord indicated that a friend is a property manager and the tenant agreed to pay half of the fees to secure a property manager, but no costs were incurred because the property manager's services were not retained.

Analysis

In this case, the tenant wished to assist the landlord in finding another tenant, but the landlord declined that offer. There is no requirement for a landlord to seek or accept assistance of a tenant to find another tenant. The tenant was at liberty to ask for the landlord's consent to sub-let the rental unit, but that conversation never took place.

The *Residential Tenancy Act* requires a party who makes a claim against another party to do whatever is reasonable to mitigate, or reduce the damage or loss suffered. That includes attempts to re-rent a rental unit at an equal amount of rent after the ending of a fixed term tenancy if the fixed term has not yet expired and the landlord makes a monetary claim against the tenant.

The landlord was notified verbally and then in writing on August 26, 2012 that the tenant intended to end the tenancy. The landlord testified that the rental unit was advertised

on Craigslist on August 3, 2012 for rent in a greater amount than the tenant was paying. The landlord was not successful and testified that there were no responses from interested tenants, and the landlord spoke to a property manager who recommended reducing the rent to a market rent of \$1,200.00 per month. The landlord testified that the property management company also advertised on their website commencing August 14, 2012 for \$1,200.00 per month, and the rental unit was re-rented for that amount effective October 1, 2012. The landlord has not provided any evidentiary material to substantiate when the advertisements were posted, where they were posted, or what the actual market rent was, according to the property management company.

The tenant testified that the landlord had disclosed that the rental unit was re-rented for October 1, 2012 for \$1,250.00 per month, not \$1,200.00 per month.

In the circumstances, I find that the landlord has made 3 errors: firstly attempting to re-rent at a greater amount of rent than set out in the tenancy agreement; secondly by advertising at a lower amount of rent than set out in the tenancy agreement; and thirdly by failing to provide evidence of any advertisements, or of the market rent to prove that the rental unit had to be rented at a lower rate. Therefore, I find that the landlord has failed to prove mitigation, which is a requirement to satisfy the test.

Conclusion

For the reasons set out above, the landlord's application is hereby 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: December 03, 2012.

Residential Tenancy Branch