



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 was convened by way of conference call in response to the landlords' application for an Order permitting the landlord to keep all or part of the tenants security deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

The tenant, a witness for the tenant and one of the landlords attended the conference call hearing, gave sworn testimony and were given the opportunity to cross examine each other on their evidence. The landlords and tenant provided documentary evidence to the Residential Tenancy Branch and only some of the landlords' evidence was provided to the tenant in advance of this hearing. The tenant provided their evidence to the landlord prior to this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Preliminary Issues

From the evidence provided I find a previous hearing took place on July 25, 2012 on the tenant's application for the return of double the security deposit and a monetary order was issued in favour of the tenant. The landlord has now applied to keep the security deposit.

Section 77 of the *Act* states that, except as otherwise provided in the *Act*, a decision or an order is final and binding on the parties. Therefore any findings made by the

Arbitrator that presided over the prior hearing are not matters that I have any authority to alter and any decision that I render must honour the existing findings. Part of the landlords' application in this matter concerns the landlords request for an order to retain the security deposit for damages therefore this section of the landlords claim is dismissed as this matter has already been determined in the previous hearing.

The landlords have named a second tenant on their application. This party attended the hearing and states she was not a tenant but is the mother of one of the tenants and simply witnessed the signing of the tenancy agreement. This party has therefore been excluded from the landlords' application.

Issue(s) to be Decided

Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agree that this tenancy started on December 01, 2011 although there had been two prior tenancy agreements in place with this tenant and two other tenants. This was a fixed term tenancy which was due to expire on August 31, 2012. The tenancy ended on April 15, 2012. Rent for this unit was \$850.00 per month due on the first day of each month.

The landlord testifies that they gave the tenants a verbal warning in January, 2012 and a written warning also in January, 2012. The tenants did not abide by these warnings and the landlord gave the tenants a Notice to vacate the rental unit on February 29, 2012. The landlord agrees this was not a legal Notice as recognised under the *Residential Tenancy Act*. The notice informs the tenants that they must vacate the rental unit by two months (60) days after receiving the letter due to a violation of section 14 of their lease agreement. The parties have not provided this section 14 of the lease agreement in documentary evidence.

The landlord testifies that the tenants did vacate on April 15, 2012 and failed to leave the rental unit clean. The landlord seeks to recover a loss of rental income for May, June, July and August, 2012 to the sum of \$3,400.00 as the rental unit could not be re-rented despite advertisements placed on three internet sites.

The tenants witness testifies that the tenants did move out on April 15, 2012 and had paid their rent up to the end of April so still had possession of the rental unit until April 30, 2012. The tenants witness testifies that she returned to the rental unit and cleaned the unit on April 16, 2012 leaving the rental unit in a clean condition for the landlords.

The tenant testifies that they did not receive a warning letter from the landlord but just received this Notice to Vacate on February 29, 2012. The tenant testifies that they acted upon this Notice and moved from the rental unit as requested by the landlord. The tenant testifies that they had to leave on April 15, 2012 as they had no heat in their unit. The tenant testifies that as the landlord ended the tenancy the tenant disputes the landlords claim for loss of rental income.

The parties presented other evidence that was not relevant to my decision. I looked at the evidence that was relevant and based my decision on this.

Analysis

I refer the parties to s 52. Of the *Act* which states:

52. In order to be effective, a notice to end a tenancy must be in writing and must

(a) be signed and dated by the landlord or tenant giving the notice,

(b) give the address of the rental unit,

- (c) state the effective date of the notice,
- (d) except for a notice under section 45 (1) or (2) [*tenant's notice*], state the grounds for ending the tenancy, and
- (e) when given by a landlord, be in the approved form.

I find the Notice given to the tenants by the landlord was not on an approved form and therefore is not a valid Notice. However the tenants acted upon this notice and moved from the rental unit. Consequently, as the landlords effectively ended the tenancy on April 30, 2012 the landlords are not entitled to recover any loss of rental income from the tenants for the remaining term of the tenancy and this section of the landlords application is dismissed without leave to reapply.

Conclusion

The landlords' application is dismissed in its entirety without leave to reapply.

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 11, 2012.

Residential Tenancy Branch