



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 tenant for the cost of this application.

Service of the hearing documents, by the landlord to the tenant, was done in accordance with section 89 of the *Act*, sent via registered mail on October 31, 2012. Mail receipt numbers were provided in the landlord's documentary evidence. The tenant was deemed to be served the hearing documents on the fifth day after they were mailed as per section 90(a) of the *Act*.

The landlord and the landlords agent appeared, gave sworn testimony, were provided the opportunity to present evidence orally, in writing, and in documentary form. There was no appearance for the tenant, despite being served notice of this hearing in accordance with the *Residential Tenancy Act*. All of the testimony and documentary evidence was carefully considered.

Issue(s) to be Decided

- Is the landlord entitled to keep the security deposit?

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

Background and Evidence

The landlord's agent testifies that this tenancy started on May 13, 2012. There was a verbal agreement for the tenants to rent this unit at a monthly rent of \$1,250.00. Rent was to be paid on any day but must be paid by the last day of each month. The tenants paid a security deposit of \$625.00 on May 13, 2012.

The landlord's agent testifies that the tenants spoke to the landlord at the end of September, 2012 to inform the landlord that the tenant would be vacating the rental unit at the end of October, 2012. The landlord's agent testifies that although the tenants did not give the landlord written Notice to vacate the landlord did accept the tenants verbal Notice.

The landlord's agent testifies that the tenants agreed to allow the landlord access to the rental unit to show the unit to prospective tenants throughout October. Two viewings took place without incident. The landlord had contacted the tenant to request another viewing on October 21, 2012 at 5.00 p.m. and the tenant consented to this viewing. However, when the viewing was taking place the tenant's wife aggressively approached the landlord's wife and started an altercation. The tenant's wife lost her composure and screamed and made bodily contact with the landlord's wife getting saliva on the landlord's wife's face. The tenant's wife then proceeded to kick the potential tenant and the landlord out of the rental unit and threatened to scare away any more potential tenants the landlord brought to the unit. At this time the tenant's wife also alleged that the landlord was a bad landlord without being able to substantiate her assertion.

The landlord testifies that the landlord's wife has filed a police report as she felt getting the landlords wife saliva on her face constituted a form of assault. The police informed

the landlord that the landlord could request police presence when the tenant and his family moved out. The tenant moved out on October 27, 2012 and police officers were in attendance where the tenant's wife again made a threat to the landlord's wife in Chinese which was translated for the police officers by the landlord's agent. The landlord has provided a police incident number in documentary evidence. The landlord has provided a witness statement from the landlord's agent and another witness who heard and saw the altercation started by the tenant's wife on October 21, 2012.

The landlord's agent testifies that the tenant also changed the locks on the rental unit on that date and this prevented other viewings from taking place for the remainder of the month. The landlord called the tenant to try to resolve issues and the tenant informed the landlord that he had no rights in bringing people to the unit to view the unit and that the tenant had changed the locks. The landlord called the tenant on October 22, 2012 to tell the tenant that he must immediately change the locks back and explained that it was illegal to change the locks without the landlord's permission. The landlord has provided a witness statement from a witness who was with the landlord on October 25, 2012 when they went to the rental unit with the tenant's permission to do an inspection and found the locks had been changed. The witness has submitted a statement saying the tenant was present at that time and agreed he had changed the locks.

The landlord's agent testifies that due to the tenants wife's behaviour the landlord could not re-rent the unit for November, 2012 and the landlord seeks to recover a loss of rent from the tenant for November to the sum of \$1,250.00. The unit was not re-rented until December 15, 2012 despite advertisements on an internet site and in the local Chinese newspaper. The landlord's agent agrees that there were no guarantees that the potential tenant who viewed the unit on October 21, 2012 would have taken the unit.

The landlord also seeks to recover advertisement costs of \$107.52 from the tenants.

The landlord has applied for the sum of \$625.00 for the security deposit. The landlord has added this sum to his claim however it was explained to the landlord's agent that if

the security deposit is awarded to the landlord then it would be deducted from any monetary claim and not added to it as the landlord already holds this sum in trust for the tenants.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of the landlord's agent. With regard to the landlords claim to recover a loss of rent for November, 2012; in normal circumstances a tenant is required to give one clear month's written notice pursuant to s.45 of the *Act*. In order to end a tenancy at the end of October this notice would need to be received by the landlord on at least the day before that rent was due for September. However, as the landlord has not clearly defined a date with the tenant that rent must be paid but simply told the tenants the rent can be paid any day as long as it is before the end of each month, then I find it difficult to determine when a Notice from the tenants could have been due. I also find that the landlord accepted the tenant's verbal notice for them to vacate the rental unit by October 31, 2012.

When a landlord has accepted a tenants notice then a landlord must start to take steps to re-rent the unit. The landlord's agent claims the landlord did advertise the unit and two viewings took place before the alleged incident with the tenant's wife. The landlord's agent has agreed that the potential tenant who viewed the unit during the altercation may not have rented the unit. I have also considered the landlords agent testimony that the tenant changed the locks to the unit on October 21, 2012 which prevented the landlord accessing the unit to show it to any further potential tenants; however, this alone would not have prevented the landlord showing the unit as the landlord could have called on police assistance to gain access to the unit and the landlord has provided no evidence to show that any [potential tenants wanted to view the unit between October 21, 2012 and October 27, 2012 when the tenants moved out.

Consequently I find I have insufficient evidence to support the landlords claim for a loss of rental income for November as there is no evidence to show that any potential tenants wanted the unit and were prevented or put off from renting by the tenant or the tenants wife's actions.

With regard to the landlords claim to recover the sum of \$107.52 for advertising costs; the landlord has provided no evidence to support his claim in the form of an invoice showing the actual cost of the advertising. Furthermore I find the landlord would have had to advertise the unit for rent anyways as the tenants had given the landlord verbal notice which the landlord had accepted for the end of October therefore the landlord would have incurred adverting costs to re-rent the unit and possible did so before any altercation with the tenants wife took place or before the tenant changed the locks.

With regard to the landlords claim to keep the security deposit; as the landlords monetary claim has been denied I find the landlord must return the security deposit to the tenant. A Monetary Order has been issued to the tenant for the sum of **\$625.00**.

As the landlord has been unsuccessful with this claim I find the landlord must bear the cost of filing his own application.

Conclusion

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

A copy of the tenant's decision will be accompanied by a Monetary Order for **\$625.00**. The order must be served on the landlord and is enforceable through the Provincial Court as an order of that Court.

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: January 29, 2013

Residential Tenancy Branch

