



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, OPL, MNR, MNDC, FF

Introduction

This hearing dealt with an application by the tenants for a monetary order and a cross-application by the landlord for an order of possession and a monetary order. Both parties participated in the conference call hearing.

Although the landlord applied for an order of possession, the landlord is in possession of the unit and the tenants are not claiming any right to possession. For that reason, I consider the claim for an order of possession to have been made in error and it was not addressed in the hearing and I consider it to have been withdrawn.

Issues to be Decided

Are the tenants entitled to a monetary order as claimed?
Is the landlord entitled to a monetary order as claimed?

Background and Evidence

The tenancy began in April 2012 when another party (the “Vendor”) owned the rental unit. The written tenancy agreement shows that the agreement was between the Vendor and the two tenants who are parties to this proceeding.

The landlord purchased the residential property from the Vendor in a sale which completed on or about August 8, 2012. The parties agreed that the Vendor had served the tenants with a 2 month notice to end tenancy (the “Notice”) which was to take effect on October 31, 2012.

Shortly after the sale of the property was completed, the landlord contacted the tenants and began negotiating with them to mutually agree to end the tenancy prior to October 31, 2012. In an undated letter which was received by the landlord’s agent on or about August 22, the tenants offered to vacate the rental unit on September 9 and asked that the landlord agree to compensate each of 4 tenants by paying each \$1,250.00.

The tenants explained that they had sublet the unit to 2 people (the "Occupants") with the permission of the Vendor and that they believed the landlord was responsible to compensate the Occupants because they too would lose their home when the tenancy ended.

The landlord testified that he did not receive a copy of the tenancy agreement until after the tenants filed their application for dispute resolution and stated that at the time he was negotiating with the tenants, he believed that the Occupants were also tenants because they were living in the rental unit. The landlord agreed with the compensation proposed by the tenants and paid \$1,250.00 to each of the tenants and to each of the Occupants.

The parties agreed that the tenants vacated the rental unit on September 9 and that they posted their forwarding address to the door of the rental unit.

The tenants seek an award of double their \$587.50 security deposit as the landlord did not file an application to retain the deposit within 15 days of the end of the tenancy. The landlord seeks an award for the full amount of September's rent as well as recovery of the monies paid to the Occupants, arguing that he paid those monies after the tenants misrepresented the Occupants' status. The tenants agreed that they should be responsible for 9 days of prorated rent for the month of September.

Analysis

First addressing the tenants' claim, Section 38(1) of the Act provides that unless the landlord receives written authorization from the tenants to retain the security deposit, the landlord must return the security deposit or apply for dispute resolution within 15 days after the later of the end of the tenancy and the date the forwarding address is received in writing. I find the landlord received the tenants' forwarding address on September 9, 2012 and I find the landlord failed to repay the security deposit or make an application for dispute resolution within 15 days of receiving the address and is therefore liable under section 38(6) which provides that the landlord must pay the tenant double the amount of the security deposit. Because the tenants acknowledged that they owe rent for 9 days of occupancy in the month of September, I find it appropriate to deduct \$352.53 (\$39.17 per day for 9 days) from the security deposit, leaving a balance of \$234.97. I note that I would have found the tenants contractually liable for this sum even had they not agreed to it.

After the deduction for rent, the landlord currently holds a security deposit of \$234.97. I find that he is obligated under section 38 to return double this amount and I award the tenants \$469.94.

Turning to the landlord's claim, it is clear that the landlord entered into negotiations with the tenants without knowing all of the details of the tenancy. While I believe that the tenants

deliberately misled him into believing that he was in a direct tenancy relationship with 4 tenants rather than 2, I find it more likely than not that because he was anxious to end the tenancy earlier than the effective date of the notice to end tenancy, he was willing to pay the total dollar amount suggested by the tenants to achieve that end and would have done so regardless of the number of tenants. I am not satisfied that the landlord entered into the settlement agreement on the basis of the tenants' misrepresentation and for that reason, I dismiss his claim to recover the monies paid to the Occupants.

I find that the landlord is entitled only to rent for the period of time in which the tenants actually occupied the rental unit in September. I find that the parties mutually agreed to end the tenancy on that date and that all of the contractual responsibilities of the parties ended on that date, including the tenants' obligation to pay rent for the remainder of the month. I therefore dismiss the claim for rent for the balance of September.

During the hearing, the tenants referred to the 2 month notice to end tenancy which had been served on them. Because I have found that the tenancy ended pursuant to their mutual agreement rather than the notice to end tenancy, I find that the tenants will not be entitled to any compensation should the landlord fail to use the rental unit for purposes other than what was indicated in the notice.

Due to the circumstances surrounding the end of the tenancy, the misrepresentation of the tenants and the failure of both parties to meet their contractual and statutory obligations, I find that the parties should each bear the cost of their own filing fees.

Conclusion

I grant the tenants a monetary order under section 67 for \$469.94 which represents the security deposit less \$352.53 in prorated rent and double that amount as a penalty pursuant to section 38(6). This order may be filed in the Small Claims Court and enforced 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 25, 2013

Residential Tenancy Branch

