



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD and FF

Introduction

This hearing was convened on an application made by the tenants on November 21, 2012 seeking return of their security and pet damage deposit, recovery of their filing fee and return of \$20 they had given the landlord for travel to the rental unit following the end of tenancy on October 31, 2012.

Issue(s) to be Decided

Are the tenants entitled to a monetary award for return of the security and pet damage deposits, return of gas money given to the landlord and recovery of their filing fee for this proceeding?

Background and Evidence

On May 16, 2012, the tenants and the landlord signed a one-year fixed term rental agreement to run from July 1, 2012 to June 30, 2013. Rent was \$1,575 per month and the landlord holds a security deposit of \$785 and a pet damage deposit of \$100 paid on or before May 31, 2012.

On September 7, 2013, the tenants gave the landlord written notice that they would be vacating the rental unit by November 1, 2012 and did so.

The landlord submitted into evidence copies of advertisements beginning in September 2012. She stated that she had a number of showings, but had lost potential tenancies because the applicants had been able to find similar housing at a lower rate.

Consequently, the landlord acted to minimize the loss as she is required to do by section 7(2) of the *Act* by reducing the asking rent to \$1,500 per month and she was able to find new tenants for November 1, 2012.

The landlord also submitted into evidence a copy of a short document dated October 28, 2012, signed by the male tenant, in which he agreed that the landlord could retain the “damage deposit” in set off against a \$100 moving fee imposed by building’s strata corporation, \$75 per month loss of rent, \$200 for carpet cleaning and any damages beyond normal wear and tear.

The male tenant concurred that he had signed the agreement permitting the landlord to retain the deposits but that he had been under great stress and was apprehensive that police might be arriving, and that he had not read the document before signing it.

The female tenant stated that the document was misleading because it expressed the loss of rent as “\$75/month loss of rent” and differed from the landlord’s letter of November 1, 2012 in that it expressed the rent differential claim as, “\$75/month loss of rent for the remaining 8 months of the 1 year lease...600.”

The tenants stated that they had left \$20 on the counter for the landlord because they felt bad that she had incurred extra travel expenses as a result of their breach of the fixed term lease.

Analysis

This was a co-tenancy in which the parties share joint and several liability.

Therefore, I find that the male tenant’s signature on the document relinquishing the deposits to the landlord is binding on both tenants. I do not find the document to have been misleading as “\$75/month loss of rent” would reasonably indicate that it did not refer to a single payment and the extension over eight months is a relatively simple calculation.

Given that failure to place a tenant for one-month would have created a loss of almost double the rent (\$800 vs \$1,575), I find that the landlord acted prudently in lowering the rent to minimize the cost given the challenge of finding tenants in the typically difficult November/December period.

Section 45 of the *Act* provides that tenants may not give notice to end a fixed term tenancy to take effect on a date earlier than the end date set by the agreement, in this case June 30, 2013.

Section 7 of the *Act* states that if one party to a rental agreement suffers a loss to the other's breach of the legislation or rental agreement, the party in breach must compensate the other for the loss, provided they act reasonable to minimize the loss.

I find that the landlord has acted in full compliance and that she was fully entitled to retain the deposits as authorized by the male tenant.

I further find that the \$20 for gas was a gift or compensation freely given and the tenants have no right to claim for its return.

As the application has failed on its merits, I decline to award the filing fee.

Conclusion

The application is dismissed on the merits 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: February 27, 2013

Residential Tenancy Branch

