



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes: MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's application for authority to retain the security deposit / and to recover the filing fee. Those in attendance included the landlord, "PT" (a person assisting her), and tenant "YY."

Issue(s) to be Decided

Whether the landlord is entitled to the above under the Act, Regulation or tenancy agreement.

Background and Evidence

Pursuant to a written tenancy agreement, the fixed term of tenancy is from March 1, 2012 to February 28, 2013. Monthly rent of \$900.00 is due and payable in advance on the first day of each month, and a security deposit also in the amount of \$900.00 was collected.

In her application the landlord claims that "the tenants moved out without a written notice" on October 2, 2012. However, during the hearing the parties appeared to agree that the only tenant who actually moved out was tenant "YY." Further, tenant "YY" claimed that she received her share of the security deposit back in the amount of \$450.00.

After tenant "YY" left, it is understood that tenant "JT" was permitted to continue living in the rental unit and pay rent in the limited amount of \$450.00 per month for each of October, November and December 2012.

Additionally, it is understood that a new tenant moved into the unit with tenant "JT" at the beginning of January 2013. While the person assisting the landlord appeared to

suggest that a new tenancy agreement was created in January 2013, there is no copy of such an agreement in evidence.

Analysis

The full text of the Act, Regulation, Residential Tenancy Policy Guidelines, Fact Sheets, forms and more can be accessed via the website: www.rto.gov.bc.ca

The principal documentary evidence before me is a copy of the tenancy agreement. The form and content of the agreement reflects a significant departure from the form and content of the template tenancy agreement which is accessible on the Residential Tenancy Branch website. In her application the landlord seeks to justify retention of the security deposit of \$900.00 on the strength of her interpretation of three (3) separate clauses contained in the tenancy agreement.

The attention of the parties is drawn to section 6 of the Act which speaks to **Enforcing rights and obligations of landlords and tenants**, and provides in part as follows:

6(3) A term of a tenancy agreement is not enforceable if

- (a) the term is inconsistent with this Act or the regulations,
- (b) the term is unconscionable, or
- (c) the term is not expressed in a manner that clearly communicates the rights and obligations under it.

Further, in relation to the amount of security deposit collected, the attention of the parties is also drawn to section 19 of the Act which speaks to **Limits on amount of deposits**, in part:

19(1) A landlord must not require or accept either a security deposit or a pet damage deposit that is greater than the equivalent of $\frac{1}{2}$ of one month's rent payable under the tenancy agreement.

As rent is \$900.00, the maximum amount of security deposit that can lawfully be collected is \$450.00. However, in the circumstances of this dispute it appears that a \$900.00 security deposit has been collected, as there is no specific mention of a pet damage deposit.

After tenant “YY” vacated, there is no evidence that the landlord sought to conclude tenancy by issuing a notice to end tenancy for unpaid rent. Rather, it appears that the landlord permitted the tenancy to continue but at a level of rent half of what was originally agreed.

Additionally, the landlord's application does not specifically request compensation for damage or loss under the Act, Regulation or tenancy agreement (loss of rental income) for any particular period of time.

Further, by way of apparently reimbursing tenant “YY's” \$450.00 share of the security deposit, there is some question around whether the landlord and tenant “YY” entered into a mutual agreement to end “YY's” tenancy.

There is no documentary evidence concerning agreements reached between the landlord and tenant “JT” after tenant “YY” vacated.

There is no documentary evidence concerning how the new tenant was found, and no documentary evidence of agreements reached between the landlord and the new tenant where it concerns length of tenancy, monthly rent or security deposit(s).

In summary, while it appears that the landlord may have lost rental income in the amount of \$450.00 for each of October, November and December 2012, the specific nature of agreements reached between the various parties is sufficiently unclear that the application must be dismissed with leave to reapply. In the event of a reapplication, the landlord is encouraged to request a face-to-face hearing.

Conclusion

The landlord's application is hereby dismissed with 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: April 24, 2013

Residential Tenancy Branch

