



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 convened in response to an application by the Landlord pursuant to the *Residential Tenancy Act* (the "Act") for Orders as follows:

1. An order to retain all or part of the security deposit – Section 38; and
2. An Order to recover the filing fee for this application - Section 72.

The Landlord and Tenant were each given full opportunity to be heard, to present evidence and to make submissions.

Issue(s) to be Decided

Is the Landlord entitled to retain the security deposit?

Is the Landlord entitled to recovery of the filing fee?

Background and Evidence

The tenancy started on April 15, 2012 with monthly rent of \$1,100.00. At the outset of the tenancy the Landlord collected \$550.00 as a security deposit. The Tenant died on October 19, 2012.

The Landlord states that upon learning of the death the unit was immediately advertised for rent on site and on an internet site with an immediate occupancy date and was filled on February 1, 2013. The unit was advertised for a rental amount of \$1,200.00 and the Landlord states that this was the original amount of rent that the Tenant was required to pay but that the Landlord agreed to reduce the rent to \$1,100.00 during the tenancy. The Landlord states that as the Tenant was not able to provide notice to end the tenancy, the Landlord has lost rental income and claims only the amount of the security deposit.

The Executor states that the unit was cleaned and ready for occupancy by October 25, 2012 and that despite repeated calls to the Landlord, no response was obtained until October 26, 2012 when the Landlord's husband, a co-landlord, informed the Executor that the unit would be advertised for December 2012 occupancy. The Executor states that the Tenant died without a will and for a period of time, no funds were being released from the bank. The Executor states further that there were not enough funds in the estate to pay another month's rent.

Analysis

Section 44 of the Act provides that a tenancy ends where the tenancy agreement is frustrated. No rent is payable after a tenancy ends. Where a tenancy agreement is frustrated, the Tenant is relieved from fulfilling obligations that existed in the tenancy agreement before the contract became frustrated. Based on the undisputed evidence that the Tenant died intestate on October 19, 2012, I find that the tenancy was frustrated by the death of the Tenant and ended at that time. As such, the Tenant cannot be held responsible for providing a month's notice or for any lost rental income for November 2012. The Landlord's application is therefore dismissed.

Conclusion

The Landlord's application is dismissed.

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 18, 2013

Residential Tenancy Branch