



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application.

Both landlords and one of the tenants attended the conference call hearing, each gave affirmed testimony, and the landlords provided evidentiary material prior to the commencement of the hearing. The parties were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) to be Decided

Have the landlords established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement?

Are the landlords entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first landlord testified that this fixed term tenancy began on September 29, 2010, expired on September 30, 2011 and then reverted to a month-to-month tenancy which ultimately ended on January 31, 2013. Rent in the amount of \$1,710.00 per month was payable in advance on the 1st day of each month and there are no rental arrears. At the outset of the tenancy the landlords collected a security deposit from the tenants in the

amount of \$800.00 which is still held in trust by the landlords, and no pet damage deposit was collected. A move-in condition inspection report was completed at the outset of the tenancy, and on January 31, 2013 a move-out condition inspection report was completed. The tenants provided a forwarding address in writing on that form on January 31, 2013.

The landlord further testified that the tenants had advised the landlords on January 5, 2013 by email that they wanted to move out by the end of that month and asked if they could pay a week's rent for February. The landlord responded that the rent for that week would be \$425.00. The tenants responded that they had no concrete decisions made, but the next day again told the landlord they were moving on February 1, 2013 and would agree to pay the week's rent for February. A copy of email exchanges were provided for this hearing, and the tenant's email dated January 5, 2013 asks if the landlords would be open to receiving a weeks' rent to cover the first week of February. The landlords' response the following day states, "Since you have not given us the full months notice we accept your proposal that you will pay one week of rent, \$425.00."

The landlord further testified that on January 8, 2013 the parties agreed to the amount of \$425.00 and the next day the tenants agreed to pay that amount on February 28, 2013. Copies of the email exchanges confirming that have also been provided. The landlord testified that no other rate was discussed however the tenants later requested a lower amount. A copy of that email was also provided, and it is dated January 18, 2013 from the tenants to the landlords. The email states that \$425.00 is to enable the landlords to do some work on the house, not for having new tenants move in after the first of the month. It also states that the calculation of 5 days rent at \$55.00 per day amounts to \$275.00. The landlord responded the same day with an email explaining that the late notice penalty is \$425.00.

The parties completed a move-out condition inspection report and a copy was provided for this hearing. The move-out portion was completed on January 31, 2013 and the tenants' forwarding address was provided at that time on that form. The rental unit was re-rented sometime in the first week of February, 2013.

The other landlord testified that the rental unit was re-rented on February 5, 2013 for \$1,800.00 per month, but the landlords deducted \$340.00 for the dates that the new tenants did not occupy the rental unit. The landlord is out-of-pocket that much money as well as the filing fee for the cost of this application.

When asked if the new tenant had requested to move in on February 1, 2013, the landlord responded that the parties agreed to February 5, 2013.

The tenant testified that when rent was increased during the tenancy, the tenant advised the landlord that the tenants would be looking for a new place to live. It took the tenants' new landlord some time to get references, and the tenant agreed to pay the current landlords a week's rent in lieu of a new tenant moving in during that week. However, the new tenant told the tenant that she had wanted to move in as soon as possible but the landlord told her it would take a week to do some work in the rental unit. The tenant feels that the tenants have been taken advantage of; the landlords would not have been out-of-pocket any money for February's rent as a result of the tenants' late notice, but only as a result of the landlords' failure to allow a new tenant to move in on the first of the month.

The tenant also testified that the landlords kept the entire security deposit for only partial rent.

Analysis

The *Residential Tenancy Act* specifically states that a landlord may not charge any non-refundable fees, and there is nothing in the *Act* that permits a landlord to charge a penalty. If a tenant over-holds, meaning that a tenant does not move out on a date that a tenancy legally ends, a landlord may charge an amount for over-holding, but may not charge a penalty for a late notice to end a tenancy given by a tenant.

In this case, the tenants did not over-hold. Further, the emails suggest throughout the exchanges that the \$425.00 requested by the landlords is a penalty. I also understand that the landlords' position is that the parties had agreed to that amount, however the *Act* also states that landlords and tenants may not contract outside the *Act*, and any attempt to avoid or contract outside the *Act* is of no effect.

The landlords had the ability to refuse the tenants' late notice, but didn't do so. Instead, the landlords asked for \$425.00 and the tenants originally agreed, but did not pay the amount and commenced an email exchange with the landlords prior to the end of the tenancy which specify that the tenants did not feel that amount was fair.

The tenants' position is that they agreed to pay one weeks' rent in lieu of giving a full month's notice to end the tenancy, and rather than allow a new tenant to move in on February 1, 2013 the landlords chose to use that time to do some work inside the rental unit rendering it un-rentable for a period of time at the tenants' expense. Also, the tenants' position is that the agreement of one week's rent is \$55.00 per day.

There is nothing in the *Act* or in the regulations that permits me to order the tenants to pay a penalty for giving a late notice to end a tenancy. Therefore, the landlords' application cannot succeed.

Conclusion

For the reasons set out above, the landlords' application is hereby dismissed in its entirety 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: May 15, 2013

Residential Tenancy Branch