



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding AQUATERRA MANAGEMENT LTD. DBA COLUMBIA PLACE
APARTMENTS
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes: *MNR, MNDC, MNSD, FF.*

Introduction

This hearing dealt with applications by the landlord and the tenant, pursuant to the *Residential Tenancy Act*. The landlord applied for a monetary order for liquidated damages, return of a move in bonus and for the filing fee. The landlord also applied to retain the security deposit in partial satisfaction of his monetary claim. The tenant's application requests to be relieved of his alleged obligation to pay liquidated damages and return the move in bonus.

The landlord served the tenant a copy of his application and notice of hearing by registered mail on May 09, 2013. The landlord filed a tracking number. Despite having made application and having been served a copy of the landlord's application, the tenant did not attend the hearing. The landlord attended the hearing and was given full opportunity to present evidence and make submissions.

Since the tenant did not attend the hearing, his application is dismissed. Accordingly this hearing only dealt with the landlord's application.

Issues to be decided

Did the tenant end the tenancy prior to the end of the fixed term? Is the landlord entitled to a monetary order for liquidated damages, return of the move in bonus and the filing fee? Did the landlord incur costs to re rent the unit?

Background and Evidence

The parties entered into a one year fixed term tenancy on July 07, 2012. The tenancy started on July 15, 2012 and was due to end on June 30, 2013. The monthly rent was \$1,750.00 due on the first of each month. Prior to moving in the tenant paid a security deposit of \$875.00.

The landlord filed a copy of the tenancy agreement. The agreement is entered into by co tenants PK and OS and contains clauses requiring the tenants to pay liquidated damages of \$300.00 and the move in bonus of \$50.00, in the event that the tenants end the tenancy prior to the end date of the fixed term.

On March 13, 2013, the tenants informed the landlord that they would be moving out on April 30, 2013. The landlord advertised the availability of the rental unit and also had multiple showings. On April 19, 2013, the tenant found a replacement for PK and the parties entered into a new tenancy agreement for the same rental unit and for the same monthly rent. The new tenants consisted of OS and a replacement for PK.

On April 30, 2013, a move out inspection was conducted, PK moved out and a new tenant moved in. OS continued to reside in the rental unit. The tenants requested the landlord to allow this transition to be covered under term 16 of the tenancy agreement which states:

The tenant may assign or sublet the rental unit to another person with the written consent of the landlord. If this tenancy agreement is for a fixed length of six months or more, the landlord must not unreasonably withhold consent. Under an assignment a new tenant must assume all of the rights and obligations under this tenancy agreement at the same rent.

Analysis

Section 45(2) of the *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice to end the tenancy effective on a date that:

- (a) Is not earlier than one month after the date the landlord receives the notice
- (b) Is not earlier than the date specified in the tenancy agreement as the end of the tenancy and
- (c) Is the day before the day in the month on which the tenancy is based that rent is payable under the tenancy agreement.

In this case, the tenants gave notice on March 13, 2013 and ended the tenancy on April 30, 2013. Even though one of the co tenants, OS did not move out, he did give notice to end the tenancy.

Had the tenant requested the landlord to allow the tenant to assign the balance of the fixed term under section 16 of the tenancy agreement, the tenant would have assumed the responsibility of finding a new tenant and accordingly would not have had to pay liquidated damages.

In this case, both PK and OS gave notice to end the tenancy and caused the landlord to incur costs to advertise and show the unit. The landlord has filed documentary evidence to support his efforts to find a new tenant. Therefore, I find that the tenants ended the tenancy agreement prior to the end date of the fixed term. I further find that the landlord did incur costs to advertise and show the rental unit and accordingly is entitled to liquidated damages.

The tenant also signed in agreement that the move in bonus would be returned in the event that the tenancy ended prior to the end date of the fixed term. However, since one tenant has not moved out yet and has completed one year in the same rental unit at the same rent, I find that the landlord is not entitled to the return of the move in bonus. Since the landlord has proven most of his case, he is also entitled to the recovery of the filing fee.

Overall the landlord has established a claim of \$350.00. I order that the landlord retain this amount from the security deposit and return the balance of \$525.00 to the tenant.

Conclusion

The landlord may retain \$350.00 from the security deposit.

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: July 23, 2013

Residential Tenancy Branch

