



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Dole Enterprises Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This was a hearing with respect to applications by the landlord and by the tenants. The hearing was conducted by conference call. The landlord's representative and the tenants called in and participated in the hearing.

Preliminary Matter

At the hearing the landlord's representative said that she was unaware that the tenants had applied for dispute resolution. She said that the landlord never received a copy of the tenants' application or any evidence in support of the application. The tenant said that she served the landlord by registered mail, but she did not submit any documentary proof that she served the landlord with the Application for Dispute Resolution. At the hearing the tenant provided me with a tracking number that she said was for the registered mail sent to the landlord. During the hearing I looked up the tracking information on the Canada Post website. The tracking information provided by Canada Post stated that the delivery method was "Regular Parcels" not registered mail. The package sent on July 21, 2013 was noted as still being in transit. The tenant's application was not sent by registered mail as required by the *Residential Tenancy Act* and the evidence established that it has not been served upon the landlord. The tenants' application is therefore dismissed without leave to reapply.

Issue(s) to be Decided

Is the landlord entitled to a monetary award and if so, in what amount?
Is the landlord entitled to retain the tenant's security deposit?

Background and Evidence

The rental unit is an apartment in Surrey. The tenancy began September 1, 2011 for a fixed term and thereafter month to month. The current monthly rent at the end of the tenancy was \$930.00. Rent was payable on the first of each month. The tenant's security deposit in the amount of \$375.00 was paid with respect to a previous tenancy agreement and was transferred to this tenancy.

On May 6, 2013 the tenants gave the landlord a written notice that they intended to move out on June 15, 2013. They stated as a reason for moving that the tenant living below them was smoking marijuana on her balcony and the smoke was entering their unit.

The tenants did not pay rent for June. On June 5, 2013 the landlord personally served the tenants with a 10 day Notice to End Tenancy for unpaid rent. The landlord's representative testified that the tenants did not move out until June 16, 2013. The landlord was unable to find a tenant to move in for the balance of June. The landlord has claimed unpaid rent for June in the amount of \$930.00, a carpet cleaning charge of \$78.75 and a late fee of \$25.00 for June.

The tenants testified that they were surprised by the landlord's application. They said that they gave the landlord more than a month's notice and they do not agree that they should be responsible for rent after June 15th. The tenants said that they gave notice to move out on June 15th because that is when the townhouse they had agreed to rent was ready for occupancy. The tenants said that they verbally informed the landlord of the marijuana issue in the fall of 2012.

The landlord's representative testified that she never received a written complaint about marijuana use and the neighbour about whom the tenants complained moved out before June 15th.

Analysis

The *Residential Tenancy Act* provides by section 45 that a tenant must give the landlord at least one month's notice effective on the last day of the month; that is the day before the day that rent is payable under the tenancy agreement. The tenants improperly ended the tenancy in mid June and on the evidence, the landlord tried but was unsuccessful in re-renting it for June. In the absence of any written complaint, I do not find that the tenants' concerns about marijuana use justified or excused their ending the tenancy in mid-month without paying rent. I find that the landlord is entitled to an award for June rent, and a late fee as well as the amount claimed for carpet cleaning.

Conclusion

I find that the landlord is entitled to a monetary award in the amount of \$1,033.75 as claimed. The landlord is entitled to recover the \$50.00 filing fee for this application, for a total award of \$1,083.75. I order that the landlord retain the \$375.00 security deposit in partial satisfaction of this award I grant the landlord an order under section 67 for the balance of \$708.75. This order may be registered in the Small Claims Court and enforced as an order of that court.

As noted above, the tenants' application for a monetary award, including an award for the return of the security deposit has been dismissed 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: September 27, 2013

Residential Tenancy Branch

