



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding SINGLA BROS HLD LTD
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit.

The tenants, the landlord and the landlord's agent attended the conference call hearing, gave sworn testimony. The landlord and tenant provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. All evidence and testimony of the parties has been reviewed and are considered in this decision.

Issue(s) to be Decided

Is the landlord entitled to keep the security and pet deposit?

Background and Evidence

The parties agree that this tenancy started on October 15, 2010 and was renewed for a six month term on May 01, 2011. The tenancy reverted to a month to month tenancy at the end of the second fixed term. Rent for this unit was \$1,400.00 per month and was due on the first day of each month. The tenants paid a security despot of \$700.00 on November 18, 2010 and a pet deposit of \$700.00 on November 30, 2010.

The landlord's agent testifies that they did a walkthrough of the unit at the start of the tenancy but no inspection report was provided to the tenants. The tenants' vacated without giving the required Notice. The tenants gave Notice on November 06, 2012 and moved from the rental unit on November 30, 2012. The landlord's agent testifies that the unit could not be re-rented for December 01, 2012 and the landlord did not receive the tenants forwarding address in writing until May 30, 2013. The landlord therefore seeks an Order to keep the security and pet deposits towards a loss of rent for December, 2012. The landlord's agent testifies that the unit was not re-rented until January 01, 2013.

The tenants dispute the landlords claim and have submitted documentary evidence concerning the landlord's failure to repair the furnace over the period of the tenancy and the washer and dryer. The tenants have submitted statements in which they have documented dates that the furnace was not working along with the washer and dryer breakdowns. The tenants have submitted that due to a further breakdown of the furnace they could not face another winter in the house due to the landlord's non compliance with the *Act* so they gave the landlord Notice to end the tenancy on November 06, 2012 and moved from the unit at the end of November, 2012.

Analysis

An oral decision was given to the parties at the hearing although upon further examination of the evidence that oral decision must be retracted. The landlord has only extinguished their right to file a claim to keep the security deposit when the landlord has failed to complete a move in inspection report when the landlords claim is for damages to the unit, site or property pursuant to section 24(2) of the *Act*. As the landlords claim in this case is for a loss of rent I must reconsider my oral decision.

I refer the parties to section 45(1) of the *Act* which states:

45 (1) A tenant may end a periodic 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, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

Consequently I find the tenants did not give sufficient Notice to end the tenancy. The tenants contend that the landlord breached the *Act* first by not providing suitable heating and a working washer and dryer in the unit however the tenants must show that the landlord did not act on the tenants request for repairs in a timely manner and as the tenants lived in the house for a considerable period of time of two years before giving notice to end the tenancy because they submit that the landlord did not comply with the *Act* I find the tenants arguments carry little weight as the tenants recourse should have been to file an application against the landlord at the time for not providing an essential service or for a loss of a facility.

The tenants are however at liberty to file an application against the landlord for compensation for a loss of a facility or essential service if they so choose.

Conclusion

I hereby uphold the landlords claim to keep the security and pet deposit to an amount of \$1,400.00 pursuant to section 38(4)(b) of the *Act*.

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 10, 2013

Residential Tenancy Branch

