



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNR OPR MNR MNSD MNDC FF

Introduction

This hearing dealt with applications by the tenants and the landlord. The tenants applied to cancel a notice to end tenancy, and the landlord applied for an order of possession pursuant to the notice to end tenancy as well as for monetary compensation. The parties agreed that the tenants had vacated the rental unit, and on that basis I dismissed the portions of both applications regarding the end of tenancy, and only heard evidence on the landlord's monetary application.

The landlord, an agent for the landlord and an agent for the tenants participated in the teleconference hearing. At the outset of the hearing, each party confirmed that they had received the other party's application and evidence. The landlord stated that they received the tenant's evidence late, but they did not want the hearing adjourned. I therefore accepted all evidence and proceeded with the hearing. I have reviewed all testimony and other evidence. However, in this decision I only describe the evidence relevant to the issues and findings in this matter.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation as claimed?

Background and Evidence

The parties agreed that the monthly rent for the unit was \$2280, and the tenants paid a security deposit of \$1140. In mid-August 2013, one of the tenants wired the landlord rent for one month and the security deposit. On October 5, 2013 the landlord received an email from the tenants, in which they informed the landlord that they had vacated the rental unit.

The landlord's evidence was that the tenants agreed to pay the full month's rent of \$2280 in order to secure the rental unit. The landlord has claimed \$4560 in unpaid rent and lost revenue for September 2013 and October 2013. The landlord acknowledged that the previous tenants paid rent for August 2013 and did not vacate the rental unit until August 31, 2013. The landlord also stated that on October 7, 2013, they attended the rental unit and found that the tenants had not returned the keys. The landlord did not take any steps after that date to attempt to re-rent the unit.

The tenants' response was as follows. The \$2280 that the tenants paid in mid-August 2013 was rent for September 2013, and the tenants did not move into the unit until September 2013. The condition inspection report indicates that the date of possession was September 1, 2013. The landlord was aware that the tenants were not moving in until September 2013, as confirmed in an email to the tenant from the landlord on August 16, 2013, where the landlord wrote that the current tenants must move out at the end of August.

Analysis

I find that the landlord is only entitled to prorated rent for October 1 to 5, in the amount of \$367.75 (5 days at \$73.55 per day). The landlord acknowledged that the previous tenants paid rent for August 2013 and occupied the unit for the full month. A landlord cannot charge double rent, and to do so would amount to fraud. The tenants paid \$2280 for September 2013. The tenants did not give proper notice when they vacated, so the landlord is entitled to prorated rent as set out above for the first five days in October 2013. The landlord acknowledged that they took no steps to mitigate lost revenue by attempting to re-rent the unit as soon as possible, and therefore the landlord is not entitled to lost revenue for the remainder of October 2013.

As the landlord's application was mostly unsuccessful, and the tenants chose to move out rather than dispute the notice to end tenancy, I find that neither party is entitled to recovery of their filing fee.

Conclusion

The tenants' application is dismissed.

The landlord is entitled to \$367.75, which they may retain from the security deposit in full compensation of this amount. I grant the tenants a monetary order for the balance of the security deposit, in the amount of \$812.25. This order may be filed in the Small Claims Court and enforced as an order of that Court.

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: November 1, 2013

Residential Tenancy Branch

