



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding One West Properties Corp. "In Trust"
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes:

Landlord's application (filed July 16, 2013): MNDC, MNR, FF

Tenants' application (filed September 9, 2013): MNSD

Introduction

This Hearing was convened to consider cross applications. The Landlord filed an Application for Dispute Resolution seeking a monetary award for unpaid rent; and to recover the cost of the filing fee from the Tenants.

The Tenants filed an Application for Dispute Resolution seeking return of the security deposit.

The parties gave affirmed testimony at the Hearing.

It was determined that the Landlord served the Tenants with its Notice of Hearing documents and copies of its documentary evidence by registered mail sent to the Tenants' new address on July 17, 2013.

It was also determined that the Tenants served the Landlord with their Notice of Hearing documents by handing the documents to the Landlord's agent AL on September 22, 2013 at the Landlord's place of business. The Tenants served the Landlord with copies of their documentary evidence by registered mail sent to the Landlord's place of business on October 4, 2013.

Preliminary Matters

The Tenants' Application was amended to reflect the complete name of the Landlord.

The tenancy agreement is a one year term lease. The Landlord applied for unpaid rent; however, the Tenants paid rent to the end of the tenancy. It is clear in its Application for Dispute Resolution that the Landlord seeks compensation for loss of revenue because the Tenants ended the tenancy before the end of its term. Therefore, I amended the

Landlord's Application to reflect their request for such compensation. Their application for a monetary award for unpaid rent is dismissed.

The Tenants indicated on their Application for Dispute Resolution that the security deposit was \$1,450.00; however, the parties agreed that the security deposit was \$1,475.00. Therefore, the Tenants' Application was amended accordingly.

Issues to be Decided

1. Is the Landlord entitled to compensation for loss of revenue due to the Tenants' breach of the tenancy agreement?
2. Are the Tenants entitled to return of the security deposit?

Background and Evidence

A copy of the tenancy agreement was provided in evidence. The parties entered into a series of leases, each with a term of one year. The Tenants moved into the rental unit on August 15, 2010. This was the first of three tenancy agreements, which ended on August 31, 2011. Rent for the first tenancy agreement was \$2,500.00 a month, due on the first day of each month. At the end of the term, the Tenants were required to move out of the rental unit unless a new tenancy agreement was negotiated.

On July 12, 2011, the parties entered into a new tenancy agreement commencing September 1, 2011. This tenancy agreement was also a one year fixed term lease, ending August 31, 2012. Monthly rent was \$2,700.00, due on the first day of each month. At the end of the term, the Tenants were required to move out of the rental unit unless a new tenancy agreement was negotiated.

The third tenancy agreement was signed by the male Tenant on July 26, 2012, by the female Tenant on August 3, 2013, and by the Landlord on August 8, 2012. This tenancy agreement was also a one year fixed term lease, ending August 31, 2013. Monthly rent was \$2,950.00, due on the first day of each month.

On May 28, 2013, the female Tenant gave the Landlord notice that the Tenants would be terminating the tenancy effective June 15, 2013. The Tenants paid rent in full for the month of June, 2013. A copy of the notice to end the tenancy was provided in evidence. The notice to end the tenancy was on a form that was pre-filled out, and included the following statements:

"I am aware that I am terminating my fixed term tenancy prior to expiry and therefore are responsible for all costs incurred by the landlord as a direct result of

this. Currently these costs are estimated at 50% of 1 months rent plus GST to re-lease the property plus any Strata move in and move out fees if applicable. I am also aware that should the landlord be unable to re-lease the property I am responsible for the monthly rent as per my Residential Tenancy Agreement until the property is successfully re-leased or my Residential Tenancy Agreement expires. I hereby authorize the Landlord to retain all of my security deposit originally paid on the property to use as a credit against the anticipated costs that will be incurred as a result of me terminating my Tenancy Agreement prematurely.”

The Landlord’s agent (“MM”) gave the following testimony:

MM testified that the Landlord attempted to re-rent the rental unit by placing ads on its web site, on Craigs List and on “other on-line forums”. He stated that initially the Landlord sought monthly rent of \$2,950.00 and that the rental unit was shown 8 times by June 28, 2013. In addition, there were 15 enquiries.

MM stated that on July 24, 2013, the Landlord lowered the advertised monthly rent to \$2,500.00. After 5 showings, it was re-rented. The new occupants signed a tenancy agreement on August 23, 2013, for September 1, 2013.

MM submitted that the Tenants breached the terms of the lease and that the Landlord had made reasonable efforts to re-rent the rental unit. He stated that the Tenants should be responsible to compensate the Landlord for loss of revenue for July and August, 2013.

The Landlord is holding the Tenants’ security deposit in the amount of \$1,475.00.

The Tenants gave the following testimony:

The Tenants’ position is that the rental unit was not in good repair and was overpriced at \$2,950.00. They submitted that they did on-line comparisons with other rental units in the same area and that they believe a more reasonable monthly rent was \$2,500.00. The Tenants provided photographs of the rental unit and copies of on-line ads in evidence.

The Tenants testified that they informed the Landlord on June 3, 2013, that the asking price of \$2,950.00 was unrealistic and above market rent. A copy of the Tenants’ e-mail was provided in evidence.

The Tenants testified that they offered to pay the difference for the months of July and August, 2013, if the Landlord would drop the asking price to a more realistic \$2,500.00. The Tenants stated that they acknowledged that they had a responsibility under the lease and offered the following additional compensation to the Landlord:

- On June 11, 2013, the Tenants told the Landlord that they would pay \$1,000.00 as an incentive to new tenants if the Landlord still wished to try to rent for \$2,950.00.
- On June 12, 2013, the Tenants offered to pay the Landlord's agent AD \$500.00 if he could re-rent the rental unit before July 1, 2013.

The Tenants stated that the Landlord did not respond to their offers and that the Landlord did not include the Tenants' incentive in their on-line ads.

The Tenants acknowledged that the Landlord eventually dropped the asking price to \$2,500.00, but not until July 24, 2013. The Tenants submitted that it was too late to re-rent the rental unit for August 1, 2013 at that point. The Tenants believe that the Landlord did not make suitable efforts to try and re-rent the rental unit before the term of the lease expired.

The Tenants stated that they authorized the Landlord to apply the security deposit towards the cost of marketing. They submitted that the Landlord incurred no cost because it paid no advertising fees for the on-line ads. Therefore, they seek return of the security deposit.

Analysis

Is the Landlord entitled to compensation for loss of revenue for July and August, 2013? and for damages to the rental unit?

In a claim for compensation for damage or loss under the Act, regulation or tenancy agreement, the applicant has the burden of proof to establish their claim on the civil standard, the balance of probabilities.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulations or tenancy Agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results. Section 67 of the Act provides me with authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Section 7(2) of the Act requires the party claiming compensation to do whatever is reasonable to minimize the damage or loss.

To prove a loss and have the Tenants pay for the loss requires the Landlord to prove four different elements:

1. Proof that the damage or loss exists,
2. Proof that the damage or loss occurred due to the actions or neglect of the Tenants in violation of the Act or agreement,
3. Proof of the actual amount required to compensate for the claimed loss or to repair the damage, and
4. Proof that the Landlord followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

The Tenant's documentary evidence indicates that the rental unit is a 3 bedroom, 2 bathroom bungalow of 1380 square feet, in need of some minor repairs. The Landlord's ad indicates that it is a 3 bedroom, 2 bathroom home of approximately 1600 square feet. The rental unit has hardwood floors, a wood burning fireplace and a partially finished basement with low ceilings (basement is included in the square footage).

The Tenants provided the following comparisons of rental properties in the same geographic location:

4 bedroom, 2.5 bathroom house, 2800 square feet Basement, detached garage	\$3,000.00
4 bedroom, 1 bathroom 1920's bungalow Some updates, "could use TLC", hardwood floors, wood burning fireplace, unfinished basement	\$2,500.00
4 bedroom, 2 bathroom house, 2000 square feet Hardwood floors, deck, share laundry with basement tenant	\$2,950.00
4 bedroom, 2 bathroom newly renovated house, 1380 square feet Hardwood floors, fireplace, large deck, one car garage	\$3,000.00
3 bedroom, 2 bathroom newly renovated house, 1450 square feet Hardwood floors, deck	\$2,700.00
4 bedroom, partially furnished house, 2200 square feet Covered deck, wood floors, fireplace	\$2,800.00
4 bedroom, 2 bathroom 1960's house, 2500 square feet New laminate floors, two wood burning fireplaces, Covered deck, single garage for storage	\$2,650.00
4 bedroom, 3 bathroom house, 2500 square feet Balcony and deck, finished basement	\$2,900.00

In this case, I find that the Landlord has not established the fourth element in the test above for the following reasons:

1. The Landlord did not provide sufficient testimony or any documentary evidence with respect to attempts that were made to re-rent the rental unit.
2. The Landlord's agent AD responded to the Tenants' June 3rd e-mail approximately 40 minutes after the Tenants sent it, stating "the owner does not want to lower the amount". The Tenants sent the Landlord follow-up e-mails, copies of which were provided in evidence, enclosing links to various advertisements for other rental properties. Based on the Tenants' oral testimony and the copies of the advertisements and the photographs that the Tenants provided in evidence, I am satisfied that the rental unit was priced above market value and that it was unrealistic for the Landlord to expect to rent the rental unit for \$2,950.00.
3. The Landlord did not advertise the incentives that the Tenants offered.

For the reasons stated above, I dismiss the Landlord's application in its entirety.

Are the Tenants entitled to return of the security deposit?

I find that the Tenants provided their written permission that the Landlord could retain the security deposit and therefore their application for return of the deposit is dismissed.

Conclusion

Both parties' applications are **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: October 31, 2013

Residential Tenancy Branch