



Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing dealt with an application by the landlords for a monetary order and an order authorizing them to retain the security deposit and a cross-application by the tenants for an order compelling the landlords to return the security deposit. Both parties participated in the conference call hearing.

Issues to be Decided

Should the security deposit be returned to the tenants?

Background and Evidence

The facts are not in dispute. The tenancy began on October 30, 2012 and ended on or about August 31, 2013. Rent was set at \$850.00 per month, payable in advance on the 30th day of each month and the tenants paid a \$400.00 security deposit at the outset of the tenancy. On August 15, the tenants emailed to the landlords a notice that they would be ending the tenancy on August 31. The landlord immediately posted the unit for rent on Craigslist.

The landlords seek to recover lost income for the month of September as the tenants did not provide adequate notice to end the tenancy, but are willing to limit their recovery to the amount of the security deposit rather than pursuing the entire month's income. The landlord who appeared at the hearing testified that she posted several advertisements throughout August and September on Craigslist.

The tenants acknowledged that they did not give adequate notice that they were ending the tenancy, but argued that the landlords did not take adequate steps to minimize their losses as their multiple posts on Craigslist were simply amended several times and not reposted to keep the posts current. They also felt that the landlord should have posted

the ad on other websites. The tenants further pointed out that the landlords failed to complete a condition inspection at the beginning or end of the tenancy.

The landlords stated that they showed the rental unit to a number of people over a period of several weeks as evidence that the advertisement was effective in drawing potential tenants.

The landlords also seek to recover the \$50.00 filing fee paid to bring their application.

Analysis

Section 45 of the Act provides that tenants who wish to end their tenancy must provide a full month's notice. Section 53 of the Act provides that if tenants give a notice to end their tenancy and state that the notice is effective on an incorrect date, the incorrect date is automatically changed to the earliest date that complies with the Act.

I find that the effective date of the tenants' notice was automatically changed to September 29, which is the earliest date it could have been effective.

Section 7(2) of the Act provides that the landlord has the obligation to do whatever is reasonable to minimize the loss suffered as a result of the tenants' non-compliance with the Act. I find that the landlords were not obligated to make every possible effort and to advertise daily on every website in order to meet this requirement and I find that posting the advertisement on Craigslist and keeping it current was sufficient to met their obligation under section 7(2).

The landlords have limited their claim for loss of income to \$400.00 and I find that they are entitled to recover that sum as well as the \$50.00 filing fee. I award the landlords \$450.00.

Sections 23 and 35 of the Act provide that landlords must coordinate a time with tenants to inspect the rental unit at the beginning and end of the tenancy and to prepare a written report. Sections 24 and 36 of the Act provide that if landlords fail to meet this obligation, their right to claim against the security deposit is extinguished.

I find that the landlords have extinguished their right to claim against the security deposit. However, there is nothing in the Act that prevents landlords from making monetary claims for loss and that claim is part of the landlords' application. Section 72(2)(b) of the Act permits me to apply the security deposit to the award due to the landlord and I find it appropriate to do so in this future.

I order the landlords to retain the \$400.00 security deposit in partial satisfaction of the claim and I grant them a monetary order under section 67 for the balance of \$50.00. This order may be filed in the Small Claims Division of the Provincial Court and enforced as an order of that Court.

Conclusion

The landlords will retain the \$400.00 security deposit and are granted a monetary order for \$50.00.

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 25, 2013

Residential Tenancy Branch

