



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Homelife Peninsula Property Management
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, FF

Introduction

This hearing dealt with the landlord's application for dispute resolution under the Residential Tenancy Act (the "Act") seeking a monetary order for money owed or compensation for damage or loss and for recovery of the filing fee.

The landlord's agent, (hereafter "landlord") and the tenants attended the telephone conference call hearing, the hearing process was explained and they were given an opportunity to ask questions about the hearing process.

The evidence was discussed and both parties agreed they received of the other's documentary evidence.

Thereafter all parties gave affirmed testimony, were provided the opportunity to present their evidence orally and to refer to relevant documentary evidence submitted prior to the hearing, and make submissions to me.

I have reviewed all oral and documentary evidence before me that met the requirements of the Dispute Resolution Rules of Procedure (Rules); however, I refer to only the relevant evidence regarding the facts and issues in this decision.

Issue(s) to be Decided

Is the landlord entitled to monetary compensation and to recover the filing fee?

Background and Evidence

The parties agreed that this tenancy began on June 1, 2012, ended on May 31, 2013, and the tenants paid a security deposit of \$575, which has been returned to the tenants.

The landlord is a property management company representing the owner of the rental unit.

The landlord's monetary claim is \$839.50, for prorated loss of rent revenue for the month of June.

The landlord's relevant documentary evidence included copies of advertisements for the rental unit and the relevant tenancy agreements.

In support of their application, the landlord submitted that the tenants originally began their tenancy on June 1, 2012, with a fixed term set to end on May 31, 2013, with a monthly rent of \$1150.

On March 12, 2013, the parties executed another tenancy agreement, set to commence at the end of this tenancy, for another fixed term from June 1, 2013 through May 31, 2014.

The landlord further submitted that they received the tenants' written notice on April 18, 2013, that they were vacating the rental unit on May 31, 2013. Directly thereafter, according to the landlord, they began marketing and advertising the rental unit and were unable to secure another tenant until June 24, 2013.

As the tenants gave notice to end the tenancy prior to the end of the fixed term, the tenants are responsible to pay rent until the end of the fixed term or until the landlords have re-rented the rental unit, according to the landlord.

Tenants' response-

The tenant submitted that they gave notice 1 ½ months in advance of the move-out date, which was far enough in advance of the date to be able to secure new tenants.

The tenants further stated that at the move-out inspection attended by both parties, nothing was mentioned about any further charges and they received their security deposit.

The tenants further submitted that they were informed by the landlord that there would be no further charges for moving out.

In support of this statement, the tenants supplied a copy of an email, dated April 18, 2013, from a landlord's agent which informed the tenants that her manager was asked if

the tenants could void the “new contract,” and the manager said that “she is willing to let this go and you will not be charged.”

Analysis

Based on the relevant oral and written evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act, which falls in sections 7 and 67, or tenancy agreement, the claiming party, the landlord in this case, has to prove, with a balance of probabilities, four different elements:

First, proof that the damage or loss exists, **second**, that the damage or loss occurred due to the actions or neglect of the respondent in violation of the Act or agreement, **third**, verification of the actual loss or damage claimed and **fourth**, proof that the claimant followed section 7(2) of the Act by taking steps to mitigate or minimize the loss or damage being claimed.

Where the claiming party has not met each of the four elements, the burden of proof has not been met and the claim fails.

In reviewing the documentary evidence, the email of April 18, 2013 from the landlord to the tenants, I find the tenants were granted authority by the landlord's agent to void the latest tenancy agreement, set to begin on June 1, 2013, and to vacate the rental unit on May 31, 2013, without further charge.

As the landlord granted the tenants permission to vacate without charge, I find the landlord failed prove that the tenants violated the Act or the tenancy agreement.

I therefore dismiss the landlord's application, without leave to reapply.

As I have dismissed the landlord's application, I dismiss their request to recover their filing fee.

Conclusion

The landlord's application is 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* and is being mailed to both the applicant and the respondents.

Dated: November 27, 2013

Residential Tenancy Branch

