



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF, O

Introduction

This hearing was convened by way of conference call in response to the landlords' application for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; other issues concerning an Order of Possession; and to recover the filing fee from the tenants for the cost of this application.

Two of the tenants and the landlord attended the conference call hearing and gave sworn testimony. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The parties confirmed receipt of evidence. 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 a Monetary Order for money owed or compensation for damage or loss?
- Is the landlord entitled to keep the security deposit?

Background and Evidence

The parties agree that this tenancy started on May 01, 2013 for a fixed term that is due to expire on April 30, 2014. Rent for this unit is \$2,050.00 per month and is due on the 1st of each month. The tenants paid a security deposit of \$1,000.00 and a pet deposit of \$400.00 which is held in trust by the landlord until the end of the tenancy.

The landlord testifies that the tenants signed a mutual agreement to end tenancy. This is dated for December 01, 2013 and has an effective date of December 31, 2013. The landlord testifies that the unit was re-rented to new tenants starting on January 01, 2014. However these tenants failed to move out and the landlord had to cancel the new tenancy agreement with the incoming tenants and pay them compensation of an undisclosed amount.

The landlord seeks an Order of Possession because the tenants failed to move out by December 31, 2013 as per the mutual agreement to end tenancy. The landlord seeks to recover an amount of \$2,675.00 from the tenants for damage done to the elevator and a light and for the compensation paid to the other tenants.

The tenants dispute the landlord's claim. The tenant TT testifies that the landlord came late one night when the other tenants were not at home. The landlord tried to force TT to sign the mutual agreement to end tenancy and had already filled in each of the three tenants' names. TT testifies that he only initialled this agreement but did not sign it as he did not agree to move out. The landlord also asked the tenant TT to sign another typed document dated November 30, 2013 which stated that the landlord hereby serves the tenants with a Notice to End Tenancy. TT testifies that he did sign that document under pressure from the landlord, however, no legal Notice has been provided to the tenants.

The tenant SS testifies that they were not happy to sign a mutual agreement to end the tenancy as they had a fixed term lease with the landlord. However the landlord still

brought prospective tenants to the unit without the tenants' permission and had to be asked to leave. The landlord then rented the unit to these prospective tenants and told the tenants they had to move out. The landlord told the tenants he had cancelled the hearing and not to bother to call in. However, as the tenants did not trust the landlord they decided to call into the hearing and found he had not cancelled it. The landlord also tried to bribe the tenants to move out.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties. With regard to the landlord's claim that the tenants signed a mutual agreement to end tenancy; I find that having reviewed this document it has not been signed by the tenants but rather the landlord has written the tenants' name in the places for the tenants to sign. One tenant has initialed this document under his name but this is not sufficient for me to determine that the tenants have agreed to vacate the unit on December, 31, 2013.

The other document provided in evidence from the landlord dated November 30, 2013 is not a legal Notice to End Tenancy and therefore has no effect. Consequently the tenancy will continue at this time.

With regards to the landlord's claim to keep the security and pet deposit; As this tenancy is continuing at this time the security and pet deposits must remain in trust until the end of the tenancy and then dealt with under section 38 of the *Act*. The landlord's claim to keep the security and pet deposits is therefore dismissed

With regard to the landlord's claim for \$2,675.00; the landlord has testified that he seeks an amount for damages to the unit, site or property. However, the landlord has provided no evidence to support his claim and has not actually filed a claim for damages but rather for money owed or compensation for damage or loss which are separate sections on the application. The landlord also seeks to recover an undisclosed amount to recover

compensation paid to the new incoming tenants. However, as the landlord did not get the tenants' signatures on the mutual agreement to end tenancy and has not served the tenants with a legal Notice to End Tenancy then the landlord should not have rented the unit to new tenants for January 01, 2014 without first ensuring that these tenants were moving out on December 31, 2012. Consequently the landlord must bear the cost of any compensation paid to the incoming tenants. The landlord's application for a Monetary Order is therefore dismissed.

As the landlord has been unsuccessful with this claim the landlord must bear the cost of filing their own application.

Conclusion

The landlord's application is dismissed in its entirety 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: January 31, 2014

Residential Tenancy Branch

