



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution (the “Application”) made by the Landlord to keep the Tenants’ security deposit.

The Landlord appeared for the hearing and provided affirmed testimony during the hearing as well as written evidence prior to the hearing. The Landlord was also permitted, under Rule 11.5 of the Rules of Procedure, to provide a copy of the written tenancy agreement after the hearing.

There was no appearance for the Tenants during the 20 minute duration of the hearing or any written evidence prior to the hearing. Therefore, I turned my mind to the service of the Landlord’s Application and Notice of Hearing documents to the Tenants (the “hearing documents”). The Landlord was given permission to exit the conference call in order to contact the witness who had served the hearing documents. The witness dialed into the hearing and provided affirmed testimony that the hearing documents had been personally served to each Tenant at their forwarding address. Based on this evidence, I find that both Tenants were served in accordance with Section 89(1) (a) of the *Residential Tenancy Act* (the “Act”).

The hearing continued and I have considered the undisputed testimony and written evidence in this decision.

Issue(s) to be Decided

Is the Landlord entitled to keep the Tenants’ security deposit in full satisfaction of the Landlord’s claim for lost rent?

Background and Evidence

The Landlord testified that this tenancy started on November 1, 2014. A written tenancy agreement was completed between the parties and shows that the tenancy was a fixed term of one year due to end on October 31, 2014. The Tenants paid the Landlord a security deposit at the start of the tenancy in the amount of \$600.00. Rent for the suite was payable by the Tenants in the amount of \$1,200.00 on the first day of each month.

The Landlord testified that on February 18, 2014 she received a phone call from the Tenants explaining that they were going to be vacating the suite on February 28, 2014. The Landlord requested the Tenants to find new renters who could complete the fixed term period of the tenancy at which point she would mutually agree to end the tenancy. However, the Tenants did not find alternative renters and instead of vacating the suite on February 28, 2014, they left on March 3, 2014. The Landlord and Tenants completed a condition inspection report on March 3, 2014 at which point the Landlord received the Tenants' forwarding address on the move out condition inspection report.

As a result, the Landlord made the Application on March 12, 2014 and claims for loss and unpaid rent for March, 2014 as she was able to re rent the suite for April, 2014; however, the Landlord only seeks to recover this loss through the retention of the Tenants' security deposit.

Analysis

I accept the undisputed evidence of the Landlord that the Tenants provided a forwarding address on March 3, 2014. As a result, I find that the Landlord made the Application to keep the Tenants' security deposit within the allowable time limits stipulated by Section 38(1) (d) of the Act.

Sections 45(2), (3) and (4) of the Act explain the circumstances in which a Tenant can end a fixed term tenancy.

In this case, I find that the Tenants had no authority under the Act to end the fixed term tenancy under the manner in which it was ended. As the Tenants failed to pay rent for March, 2014 and left on March 3, 2014, this would not have enabled the Landlord to mitigate loss by renting it for this month. As a result, I find that the Tenants are liable for March, 2014 rent in the amount of \$1,200.00 and the Landlord is able to satisfy this amount by retaining the Tenants' security deposit in **full** satisfaction of the Landlord's claim.

Conclusion

For the above reasons, I order the Landlord to retain the Tenants' security deposit in the amount of \$600.00 in **full** satisfaction of the Landlord's Application.

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: July 04, 2014

Residential Tenancy Branch

