



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, MNSD, FF, O
CNC

Introduction

This hearing was convened by way of conference call concerning applications made by the landlords and by the tenant. The landlords have applied for an order of possession for cause; for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application. The tenant has applied for an order cancelling a notice to end tenancy for cause.

All parties attended the hearing and one of the landlords and the tenant each gave affirmed testimony. The landlord also called witnesses who gave affirmed testimony. The parties also provided evidentiary material in advance of the hearing to the Residential Tenancy Branch and to each other. The parties were given the opportunity to cross examine each other and the witnesses on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

During the course of the hearing, the landlords both agreed that the application for an order of possession is withdrawn, and the tenant therefore withdraws the application for an order cancelling the notice to end tenancy. The parties agree that the tenant has moved out of the rental unit.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord testified that this month-to-month tenancy began on July 13, 2014 and ended on September 30, 2014. Rent in the amount of \$500.00 per month was due when social services paid it for tenants on social assistance, and for those paying cash, the tenancy agreement specifies that rent is payable on the 30th day of the previous month. There are no rental arrears. A copy of the tenancy agreement has been provided. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$250.00 which is still held in trust by the landlords. No move-in or move-out condition inspection reports were completed at the beginning or end of the tenancy.

The rental unit is a furnished room in a house that the landlord rents from the other landlord named in this dispute, and neither of the landlords resides on the rental property. The landlord also rents other properties from landlords and sub-lets them.

The landlord further testified that around August 11, 2014 the tenant told the landlord that he was moving out of the rental unit but did not provide a written notice. The tenant has been problematic since the tenancy began and on August 12, 2014 the landlord served the tenant a 1 Month Notice to End Tenancy for Cause to ensure he would leave. The effective date of the notice was September 30, 2014. The tenant was fighting the move-out and disputed the notice to end tenancy. When the landlord served the tenant with the application and notice of this hearing he asked if the tenant was moving out, and the tenant replied that he was not. The tenant had anger management problems, and the tenant has difficulty communicating, and not wanting to be the brunt of the tenant's actions and verbal dialogue, the landlord kept his distance from him.

The landlord also testified that the landlord looks after 9 houses and runs advertisements constantly, and has provided a sample stating that to prevent drive-by lookers, the advertisements to not include the addresses of the rental units available. He ran advertisements every 2 weeks for months and months in 2 local newspapers and Kijiji, a free on-line advertising web-site. Currently, the landlord rents out 55 rooms and 7 are currently vacant. The rental unit has been shown twice since the tenant

moved out, being Tuesday and Wednesday last week, but the tenants were not suitable; he believes that one was a recovering heroine addict on the methadone program and the other was looking for a place to run a drug operation. The landlord has a no drugs and no pet policy. The landlord also testified that the rental unit could not be shown to perspective tenants because of the state of it while the tenant resided there. The notice to end tenancy was effective September 30, 2014 and this hearing was scheduled for October 7, 2014. He stated that the tenant advised that he wasn't going to move out, so based on that the landlord assumed he would need a Writ of Possession and awaited the hearing date.

The landlord's first witness testified that the rental room was cleaned by that witness prior to the commencement of the tenancy and was very suitable accommodation.

The landlord's second witness testified that while he was assisting the landlord with repairs to a unit on August 12, 2014, he overheard the tenant give verbal notice to the landlord that the tenant intended to vacate the rental unit.

The tenant testified that the landlord never notified the tenant that he wanted to show the rental unit, but stormed off without allowing the tenant to say anything. At one time the landlord told a neighbour to call the police because the tenant threatened and assaulted the landlord, but the tenant denies that any assault or threat took place. Every occasion the tenant had dealings with the landlord, the landlord was aggressive. It's the landlord who has anger issues, pointing his finger at the tenant, and the tenant felt threatened.. The tenant testified that he has never used a loud tone of voice to the landlord, nor did he tell the landlord that he wouldn't move out.

The tenant further testified that the landlord told the tenant that if the tenant moved out he wouldn't get back the security deposit. First the landlord said he'd take \$25.00 for cleaning carpets and other expenses such as moving the fridge. He also said he'd charge the tenant for moving the bed.

The tenant further testified that the house is 80 years old so there are a lot of issues, such as out-of-date electrical and plumbing, but the tenant kept the room clean.

The tenant also testified that he did not intend to dispute the landlord's notice to end the tenancy but thought he was applying for return of the security deposit.

Analysis

I have read the application of the tenant which clearly states that the nature of the dispute is to cancel a notice to end tenancy issued for cause. In the details section the tenant wrote: "I never received a warning, I don't know what he is talking about. I told

the landlord I want to because of mold and rotten flooring and maintenance complaints from me and then he gave me the notice.” Therefore, I do not accept the testimony of the tenant that he thought he was applying for return of the security deposit. I find that the tenant applied on August 19, 2014 for an order cancelling the notice to end tenancy issued by the landlord.

The landlords have applied for 1 ½ month’s rent for loss of revenue of the rental unit. In order to be successful in such a claim, the onus is on the landlords to establish the 4-part test:

1. That the loss of revenue exists;
2. That the loss of revenue exists because of the tenant’s failure to comply with the *Act* or the tenancy agreement;
3. The amount of the loss; and
4. What the landlords did to mitigate any loss.

In this case, the landlord claims that the tenant is liable for loss of revenue because the tenant barred the landlord from re-renting the room by disputing the landlord’s notice to end the tenancy even though the tenant verbally gave the landlord notice to end the tenancy. Regardless of the notice, the issues before me are whether or not the landlord did what was necessary to re-rent the room and whether or not the tenant is liable for the landlords’ failure or inability to re-rent the room.

The landlord has provided copies of advertisements from a local newspaper and testified that advertisements are run continuously in 2 local newspapers and Kitjiji for whichever of the 77 units the landlord rents is vacant or becoming vacant. I accept that testimony.

The tenant testified that the landlord never gave the tenant any notice that he intended to show the rental unit, and the landlord does not dispute that but argues that the tenant disputed the landlord’s notice, told the landlord he wasn’t going to move out, and since the hearing date was only 7 days after the effective date of the landlord’s notice, the landlords decided to wait until this hearing to deal with the notice and any loss of rental revenue. The landlord testified that the tenant was aggressive and the tenant denies that and testified that it was the landlord who was aggressive. Where the issue boils down to one person’s word against another, it has not been proven.

I have no evidence before me of how many or if any persons answered the advertisements other than after the tenant moved out. If no one did, that cannot be the responsibility of the tenant, and if they did, there is no evidence that the landlord mitigated any loss of revenue by showing the room to perspective tenants after giving

the tenant notice of that during the tenancy. I accept that the landlord had several other units to show to perspective tenants, but by failing to give the tenant any notice to show the rental unit during the tenancy to perspective tenants, and failure to show the rental unit to perspective tenants, I find that the landlord has failed to mitigate any loss. Therefore, I find that the landlord has failed to prove that the tenant is responsible for any loss of revenue and the landlords' application is hereby dismissed.

Conclusion

For the reasons set out above, the tenant's application is hereby dismissed as withdrawn.

The landlords' application for an order of possession is hereby dismissed as withdrawn.

The balance of the landlord's application is hereby dismissed.

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 11, 2014

Residential Tenancy Branch

