



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, MNDC, FF

Introduction

This matter dealt with an application by the Landlord for a Monetary Order for unpaid rent, for compensation for loss or damage under the Act, regulations or tenancy agreement, to retain the Tenants' security deposit and to recover the filing fee for this proceeding.

The Landlord said she served the Tenants with the Application and Notice of Hearing (the "hearing package") by registered mail on July 14, 2014. Based on the evidence of the Landlord, I find that the Tenants were served with the Landlord's hearing package as required by s. 89 of the Act and the hearing proceeded with both parties in attendance.

Issues(s) to be Decided

1. Are there rent arrears and if so, how much?
2. Is the Landlord entitled to compensation for unpaid rent and if so how much?
3. Is there a loss or damage and if so how much?
4. Is the Landlord entitled to compensation for the loss or damage and if so how much?
5. Is the Landlord entitled to keep the Tenants' security deposit?

Background and Evidence

This tenancy started on August 1, 2013 as a fixed term tenancy with an expiry date of August 1, 2014. Rent was \$1,400.00 per month payable in advance of the 1st day of each month. The Tenant paid a security deposit of \$700.00 on July 25, 2013. The Tenants said they moved out of the rental unit on June 30, 2014. The Landlord said no move in condition inspection was completed but a move out condition inspection was completed but not signed by the Tenants on July 2, 2014.

The Landlord said that the Tenants moved out of the rental unit 1 month prior to the expiry date on the fixed term tenancy agreement. The Landlord continued to say that she sold the house and the purchasers took possession of the house on August 1, 2014. As a result the Landlord said she made this application for the lost rental income in the amount of \$1,400.00 for the month of August, 2014. The Landlord said she has retained the Tenants' security deposit of \$700.00 which she would like to use as partial payment of the lost rental income. As well the Landlord requested to recover the filing fee from of \$50.00 from the Tenants.

It was noted that the Landlord had sent in a tenancy agreement that did not match the tenancy agreement that the Tenants had sent in. The Tenants' tenancy agreement only had one landlord named and there were no names in the tenant area of the contract on page one. The Landlord said she added the names to the contract prior for the dispute hearing as her husband was a part owner of the rental unit and she had forgot to put the Tenants names in the contract when she originally gave the Tenants a copy of the agreement. The Landlord said she did not confirm the changes with the Tenants and she did not give the Tenants a copy of the amended tenancy agreement prior to her dispute application.

The Tenants said they had a verbal agreement with the Landlord that they could move out before the expiry date of the fixed term agreement if they gave the Landlord 1 month written notice. The Tenants said they gave the Landlord written notice on May 29, 2014 that they were moving out on June 30, 2014. The Tenants said it appeared to be fine with the Landlord as she did the move out inspection and changed the locks to the unit on July 2, 2014.

Further the Tenants said that the tenancy agreement for the fixed term of 1 year is invalid because they were not named on the contract and because the Landlord changed the contract without their agreement. As a result the Tenants said they are not responsible for the lost rental income the Landlord is claiming of \$1,400.00 for August, 2014.

In closing the Tenants said the fixed term tenancy agreement is not valid as they are not named on it, they had a verbal agreement to move out prior to the expiry date in the tenancy agreement, and they gave proper written notice to end the tenancy on May 29, 2014.

The Landlord said in closing that she believes the fixed term tenancy agreement is valid even if she amended it without the Tenants knowledge and she and the realtor kept the Tenants up to date on the sale of the house and they were respectful of the tenancy agreement. The Landlord said the sale of the house was August 1, 2014 which was the expiry date of the fixed term tenancy agreement. The Landlord said the Tenants should be responsible for the loss of rental income for August, 2014 in the amount of \$1,400.00.

Analysis

It is the responsibility of the Landlord to complete a tenancy agreement accurately and then provide a copy of the agreement to the tenants within 21 days. Section 13 (2) (b) of the Act says the tenancy agreement **must** have the correct legal names of the tenants and landlords as prescribed by the regulations. In this situation both parties agreed that the original tenancy agreement did not have one of the landlord's names on the agreement nor did the contract have the tenants' names on it. Consequently I agree with the Tenants claim that the fixed term tenancy agreement dated July 25, 2014 is invalid as it does not have the names of the tenants on it. I find the fixed term tenancy agreement dated July 25, 2014 is invalid. As a result the tenancy reverts to a verbal month to month or periodic tenancy agreement.

Section 45 (1) of the Act says a tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In this situation the Tenants gave the Landlord proper written notice to end the tenancy on May 29, 2014 for a vacancy date of June 30, 2014. I find the Tenants complied with the Act.

Consequently I find the Landlord has no claim for lost rental income against the Tenants and I dismiss the Landlord's application without leave to reapply.

Further the Landlord is ordered to comply with the Act in how to handle the Tenants' security deposit and the Landlord has 15 days to comply with the Act as of today.

As the Landlord has been unsuccessful in this matter I order the Landlord to bear the costs of the filing fee of \$50.00.

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*.

Dated: November 19, 2014

Residential Tenancy Branch

