Dispute Resolution Services

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNR, MNSD, O, MNSD, FF

Introduction

In the first application, by filing date, the tenants seek recovery of $1000.00 of deposit money paid prior to the start of the tenancy, doubled pursuant to s.38 of the *Residential Tenancy Act* (the "*Act*").

In the second application the landlord seeks a monetary award against Mr. N.C. for loss of rental income.

Issue(s) to be Decided

Does the relevant evidence presented at hearing show on a balance of probabilities that either claim has been established?

Background and Evidence

The rental unit is a three bedroom house.

The landlord and the tenant Mr. N.C. signed a written tenancy agreement on November 12, 2014 for a tenancy of six months, to commence December 15, 2014 and to end June 14, 2015. The tenants are shown to be Mr. N.C. and the applicant Ms. M.B. Only Mr. N.C. signed the tenancy agreement.

The rent was agreed to be $1375.00 per month. The agreement called for the tenants to pay a $687.50 security deposit and a $687.50 pet damage deposit by November 12, 2014. Ultimately $1000.00 was paid.

On or about November 30, 2014 the tenant Mr. N.C. notified the landlord that he could no longer afford the premises and, on December 2, informed the landlord he would not be taking possession on December 15, 2014.

The landlord contacted other persons who had expressed interest in the property but was unable to secure a replacement tenant for December 15th. On or about December 7th the landlord secured a new tenant for a tenancy to start January 1, 2015.

On December 7th landlord emailed the tenant Mr. N.C. informing him that he'd found a replacement tenant for January 1st. The email stated "I am out a ½ month rent and all my time for re-renting the house. Having said that, if you send me your forwarding address I will refund you the $312.50."

The "$312.50" was a calculation reached after deducting a half month's rent for December 15 to 31, 2014 from the $1000.00 the landlord was holding as deposit money.

On December 9th the tenant Mr. N.C. send an email to the landlord containing only an address.

On December 10th the landlord mailed the tenant Mr. N.C. a cheque in the amount of $312.50. The tenant cashed the cheque on December 29th.

The tenant application was mailed to the landlord on February 19, 2015 and the landlord cross applied within the few days following.

The tenant Mr. N.C. testified that he didn't agree to the landlord retaining any part of the $1000.00. He considers that the landlord should have been able to find a replacement tenant by December 15th, thus avoiding any loss.

The tenant Ms. M.B. says there exists a text message to indict that the tenants did not agree for the landlord to keep any money. She says she was under the impression that text messages were not admissible evidence at a hearing of this nature.

The tenant Mr. N.C. confirmed there was no further correspondence with the landlord after the December 9th email with the tenants' address.

Analysis

The tenancy agreement was not signed by Ms. M.B. and I find that she was not legally a tenant.

Text messaging and other digital communication have long been admissible at hearings of this nature. Indeed, a Residential Tenancy Policy Guideline, #42, deals with how to submit digital evidence.

I find that there was an enforceable tenancy agreement created between the landlord and the tenant Mr. N.C.

I find that the tenant repudiated that agreement on December 2, 2014 when he informed the landlord he and Ms. M.B. would not be moving in.

The landlord commenced to secure replacement tenants immediately. He canvassed people who had been interested in the property previously. He placed ads and showed the premises. I find the landlord took all reasonable steps to mitigate his loss.

I find that the landlord's December 7th email was an offer to the tenant to resolve the landlord's obvious claim for loss by keeping all but $312.50 of the $1000.00 being held. I find that the tenant's email response, sending only an address, was an acceptance of that offer. The tenant has full opportunity to respond and say "no I don't agree, but here is my forwarding address, but he didn't.

Section 38(4) of the *Act* states: "A landlord may retain an amount from a security deposit or a pet damage deposit if, (a) at the end of a tenancy, the tenant agrees in writing the landlord may retain the amount to pay a liability or obligation of the tenant"

The requirement of an agreement being "in writing" can be met by email correspondence in accordance with the *Electronic Transactions Act*, SBC 2011, C 10, section 5 of which provides: "A requirement under law that a record be in writing is satisfied if the record is (a) in electronic form, and (b) accessible in a manner usable for subsequent reference"

I find that the landlord was entitled to retain all but $312.50 of the deposit money pursuant to s. 38(40 of the *Act*.

As a result, the tenant cannot now claim it, nor can the landlord seek more than he has settled for.

Conclusion

The tenant's application is dismissed.

The landlord's application is dismissed. However, it was proper for him to bring his application considering that the settlement the parties reached might not have been upheld. I therefore grant the landlord recovery of the filing fee. He has declined the offer of a monetary order against the tenant Mr. N.C. for that fee.

This decision is rendered orally at hearing and 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: April 01, 2015

Residential Tenancy Branch