



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing dealt with the landlord's application pursuant to the *Residential Tenancy Act* ("the Act") for a monetary order for loss of rent pursuant to section 67; authorization to retain all of the tenants' ("respondents") security deposit pursuant to section 38; and authorization to recover the filing fee for this application from the respondents pursuant to section 72.

Both parties attended the hearing and were given a full opportunity to be heard, to present their sworn testimony, and to make submissions. The respondents confirmed receipt of the landlord's dispute resolution package although they did experience some delay and difficulty in receiving the materials. The tenants confirmed during the hearing that they had been able to review and consider their response to the landlord's materials.

Issue(s) to be Decided

Is the landlord entitled to a monetary order for loss of rent?

Is the landlord entitled to retain all of the respondents' security deposit?

Is the landlord entitled to recover the filing fee for this application from the respondents?

Background and Evidence

The respondents met with the landlord on November 9, 2014 after responding to an online ad for a rental unit. The advertisement indicated an availability date of November 1, 2014 and a rental amount of \$1000.00 payable on the first of each month. No written rental agreement was signed by the tenants with respect to this rental unit.

After meeting with the landlord and seeing the property briefly, the respondents testified that they were hesitant but that the landlord was very insistent that they rent the unit.

The respondents provided a \$475.00 security deposit on November 11, 2014 with an appointment to meet with the landlord on November 23, 2014 to discuss details of the tenancy.

The respondents telephoned the landlord on November 20, 2014 and indicated that they no longer intended to rent the rental unit. After a request for a written notice with a forwarding address from the landlord, the tenants provided an address in writing on November 21, 2014. After some brief email correspondence, the landlord filed for dispute resolution seeking to retain the respondent's security deposit. The landlord amended her application on November 25, 2014 to include a monetary order for loss of rent for the month of December 2014.

The landlord testified that she had taken her online advertisement off the internet after receiving a cheque from the respondents. She testified that, when they indicated they would not be renting the unit, she put her ad back online for a brief time. She testified that she received no response to her advertisement, attributing the lack of response to the time of year. The landlord testified that, over the course of December, her mother became very ill and she was unable to attend to renting her rental unit. She testified that she was "just too busy". She also testified that she hired an agent to rent her rental unit because of her personal circumstances. She testified that a new tenant took possession on January 2, 2015.

Analysis

The definitions section of the *Act* states that a security deposit means

money paid, or value or a right given, by or on behalf of a tenant to a landlord that is to be held as security for any liability or obligation of the tenant respecting the residential property, but does not include any of the following:

- (a) post-dated cheques for rent;
- (b) a pet damage deposit;
- (c) a fee prescribed under section 97 (2) (k) [*regulations in relation to fees*] ...

In this case, as the tenants did not occupy the rental unit, the security deposit cannot be applied to damage to the rental unit caused by the tenants. The landlord sought to be reimbursed for the cost of re-renting the unit and the loss of one month's rent while she attempted to re-rent.

Residential Tenancy Policy Guideline No. 29 states that, “the *Residential Tenancy Act* provides that a landlord must not require that a security deposit be paid except at the time that the tenancy agreement is entered into....” (also section 20 of the Act). In this case, the respondents had taken the very initial step by providing a security deposit to the landlord. However, a residential tenancy agreement had not been created or signed by all of the parties.

In fact, this deposit became a promise and a request to hold the rental unit for the tenants. The deposit was paid on November 11, 2014 and within 10 days the tenants advised the landlord that they would not rent the unit. The landlord had 9 days until the end of the month. I accept her testimony that it was difficult to find a tenant at that point in the month for December 1, 2014. The landlord testified that some efforts were made to re-rent, including re-posting her ads on a variety of sites and locations but to no avail.

As a result of the landlord’s personal circumstances, she was unable to rent the unit for the following month. She testified that the unit sat empty and she was unable to make any efforts in that month to rent the unit herself. She testified that she re-rented the unit for January 1, 2015.

Section 16 of the Act indicates when the rights and obligations of tenants and landlords begin.

16 The rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.

Firstly, I find that in this circumstance, there was a meeting of the minds between the landlord and tenants that they provided the security deposit with the intention to rent the unit. Given that the landlord and tenants had agreed to the material parts of a tenancy including the rental amount, and the dates, I find that there was a tenancy agreement between the parties.

I find that, in this particular set of circumstances, the lack of ability by the landlord to effectively mitigate her claim for loss by making active and ongoing efforts to re-rent the unit reduces the worth of her claim. I do not find the landlord is entitled to both retain the security deposit and be compensated for one months’ rent. However, I find that the landlord suffered some loss as a result of the tenants’ decision to rent elsewhere.

Given that it was near the end of the month when the tenants provided the landlord with notice and that she testified she had, in the meantime, stopped advertising for renters, I find that the landlord is entitled to compensation for a half month’s rent or the amount

provided as the security deposit, \$475.00. As the landlord continues to hold the security deposit, I will allow her to retain the deposit in full compensation for her application of monetary loss.

As the landlord was partly successful in her application, I find that she is entitled to recover the \$50.00 filing fee for this application from the tenants.

Conclusion

I allow the landlord to retain the security deposit provided by the tenants in the amount of \$475.00.

I issue a monetary award in favour of the landlord in the amount of \$50.00.

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: June 29, 2015

Residential Tenancy Branch

