



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This hearing dealt with an Application for Dispute Resolution by the landlords filed under the Residential Tenancy Act, (the "Act"), for an order to retain the security deposit and to recover the filing fee from the tenants.

The landlord attended the hearing. As the tenants did not attend the hearing, service of the Notice of Dispute Resolution Hearing was considered.

The Residential Tenancy Branch Rules of Procedure states that each respondent must be served with a copy of the Application for Dispute Resolution and Notice of Hearing.

The landlord testified the Application for Dispute Resolution and Notice of Hearing were sent by registered mail sent on July 21, 2015, and successfully delivered on July 23, 2015. Canada post tracking numbers were provided as evidence of service.

I find that the tenants have been duly served in accordance with the Act.

Issue to be Decided

Are the landlords entitled to retain the security deposit?

Background and Evidence

On June 22, 2015, the tenants paid a security deposit in the amount of \$362.50. The tenancy was to commence on July 1, 2015. Rent in the amount of \$725.00 was payable of the 1st day of each month.

The landlord testified that the tenants on June 24, 2015, asked if they could move into the rental unit early. The landlord stated they were agreeable only if rent was paid at the prorated amount.

The landlord testified that they did not receive a response from the tenants, until June 26, 2015, by text message. The tenants indicated that they spend their money on a

hotel room and they no longer had any rent money and were not taking possession of the rental unit on July 1, 2015.

The landlord testified that when they accepted the security deposit from the tenants, they stopped showing the rental unit to potential other renters. The landlord stated that due to insufficient notice to end the tenancy, they were unable to find a new renter for any portion of July 2015. The landlord seeks to retain the security deposit to offset their loss.

Analysis

Based on the above, the testimony and evidence, and on a balance of probabilities, I find as follows:

In a claim for damage or loss under the Act or tenancy agreement, the party claiming for the damage or loss has the burden of proof to establish their claim on the civil standard, that is, a balance of probabilities. In this case, landlord has the burden of proof to prove their claim.

Section 7(1) of the Act states that if a landlord or tenant does not comply with the Act, regulation or tenancy agreement, the non-complying landlord or tenant must compensate the other for damage or loss that results.

Section 67 of the Act provides me with the authority to determine the amount of compensation, if any, and to order the non-complying party to pay that compensation.

Under section 16 of the Act, 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.

The parties entered into a tenancy agreement on June 22, 2015, and the tenancy was to commence on July 1, 2015. Although the tenants did not occupy the rental unit, they were required under the Act, to give the landlords sufficient notice to end the tenancy. I find the tenants breached the Act, when they failed to give the landlords sufficient notice to end the tenancy and this caused losses to the landlords.

Although under normal circumstance the tenants are required to compensate the landlords for the full loss, which in this case is one month rent. However, the landlords were only requesting to retain the security deposit to offset their loss and recover the filing fee.

Therefore, I find that the landlords have established a total monetary claim of **\$412.50** comprised of loss of revenue and the \$50.00 fee paid by the landlords for this application.

I order that the landlords retain the security deposit of \$362.50 in partial satisfaction of the claim and I grant the landlords an order pursuant to section 67 of the Act, for the balance due of \$50.00. This order may be filed in the Provincial Court (Small Claims) and enforced as an order of that court.

Conclusion

The landlords are granted a monetary order, and may keep the security deposit in partial satisfaction of the claim. I grant a monetary order for the balance due.

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: December 14, 2015

Residential Tenancy Branch

