



Dispute Resolution Services

Page: 1

Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding DFH Real Estate Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes

MNR, MNSD

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord for a monetary order for unpaid rent or utilities and for an order permitting the landlord to keep all or part of the pet damage deposit or security deposit.

An agent for the landlord company and one of the named tenants attended the hearing and the tenant also represented the other named tenant. The parties gave affirmed testimony and were given an opportunity to question each other with respect to 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.

Issue(s) to be Decided

- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Should the landlord be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent (hereafter referred to as "the landlord") testified that this fixed term tenancy began on August 1, 2015 and was to expire on June 30, 2016, however the tenants vacated the rental unit on September 16, 2015. Rent in the amount of \$2,950.00 per month was payable on the 1st day of each month. On July 2, 2015 the landlord collected a security deposit from the tenants in the amount of \$1,475.00 and no pet damage deposit was collected. The rental unit is a single family dwelling, and a copy of the tenancy agreement has been provided.

One of the tenants called the landlord in early September, 2015 saying that the tenants may be moving to the Middle East, which was followed up with an email from the tenant on September 10 confirming that the tenant was leaving on September 15 and ending the tenancy. Rent was paid to the end of September and a move-out condition inspection report was completed by the parties on September 16, 2015, as the tenant received a few days grace before he had to leave the country. A copy of the move-in/out condition inspection report has been provided and the tenant provided a forwarding address in writing on that form.

The landlord immediately took to advertising the rental unit for an availability date of October 1, 2015 on Craigslist, Used Victoria, and Sabbatical Homes, which is a website for professionals looking for accommodation. The advertisements showed the same amount of rent. The landlord company did its best to re-rent for October 1, 2015 so that the tenants wouldn't have to pay for it, however one application to rent was received prior to September 30, and the prospective tenant had a pet which was not agreed to by the owner. There were other showings in October, and new tenants who did not have pets were accepted for a rental commencing November 1, 2015. The landlord holds the security deposit, and given that the tenants are not in the Country, the landlord seeks to keep the security deposit in lieu of unpaid rent for October, 2015.

The tenant testified that on September 1 or 2, 2015 the tenant called the landlord stating that the tenant had an order to return to the Middle East. On September 10, 2015 the tenant sent an email confirming that. The move-out condition inspection was completed on September 16, 2015 and the tenant agreed in writing that the landlord could retain \$75.00 for over-usage of Wi-Fi and \$500.00 for liquidated damages as stated in the tenancy agreement. That left a balance of \$900.00 of the security deposit which the tenants expected would be returned.

The tenant further testified that he also attempted to find another renter for the landlord and an acquaintance applied to take over the lease on September 15, 2015. The tenant had no idea that the landlord had rejected that tenant due to a dog until receiving an email from the landlord seeking \$2,050.00. A copy of the email has been provided and it is dated October 2, 2015. The tenant didn't open the email until October 8, 2015, and it implied that the prospective tenant wasn't accepted, and that's how the tenant found out. The tenant believes he would have found an acceptable tenant to mitigate any loss of revenue for the landlord had he known that the prospective tenant was not accepted. The tenant agreed to liquidated damages and attempted to find another tenant even though the liquidated damages clause was for the purpose of the landlord re-renting the rental unit. Also, the advertisement stated that pets would be considered.

The tenant also testified that the date the tenancy ends is blank on the move-out condition inspection report. The report was completed on September 16, 2015 and the tenants provided a forwarding address on that form. The landlords have not returned the security deposit balance and the tenant submits that the landlords are liable for double.

Analysis

The parties agree that the tenants vacated the rental unit prior to the end of the fixed term. There is no dispute that the tenants agreed that the landlords could retain \$75.00 for Wi-Fi and \$500.00 of the security deposit as liquidated damages for such a breach, and the tenancy agreement specifically states: "5. Liquidated Damages. If the tenant breaches a material term of this Agreement that causes the landlord to end the tenancy before the end of any fixed term, or if the tenant provides the landlord with notice, whether written, oral, or by conduct, of an intention to breach this Agreement and end the tenancy by vacating, and does vacate before the end of any fixed term, the tenant will pay to the landlord the sum of \$500 as liquidated damages and not as a penalty for all costs associated with re-renting the rental unit. Payment of such liquidated damages does not preclude the landlord from claiming future rental revenue losses that will remain unliquidated." In other words, the landlords are not precluded from claiming liquidated damages and loss of rental revenue.

In order to be successful in such a claim, the onus is on the landlords to establish that the landlords did what was reasonable to mitigate any such loss. The landlord testified that advertisements were posted on 3 websites immediately for the same amount of rent. Copies of the on-line advertisements have not been provided, however, I have no reason to disbelieve the landlord. There was only one applicant, the prospective tenant found by the tenant, but was not accepted. The tenant believes that he would have been able to find another tenant had he known that the prospective tenant wasn't accepted. However he also testified that the prospective tenant applied on September 15, 2015 and the move-out condition inspection report was completed September 16, 2015. The landlord testified that it took some time to get a response from the owner about the dog, and by the time he received the response, the tenants had already moved to the Middle East. Therefore, I find it difficult to accept that the tenants could have found another tenant. In the circumstances, I am satisfied that the landlords did what was reasonable to re-rent the rental unit, and the landlords have established a monetary claim as against the tenants in the amount of \$2,950.00.

With respect to the tenant's submission that the landlords should be liable for double the amount of the security deposit, regardless of what the tenancy agreement states, the *Residential Tenancy Act* states that unless a tenant otherwise agrees in writing, a landlord must return a security deposit in full to a tenant within 15 days of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, whichever is later, or must make an application for dispute resolution claiming against the deposit within that 15 day period. If the landlord fails to do either, the landlord must repay the tenant double the amount. In this case, the tenant agreed in writing that the landlord could retain \$575.00 of the \$1,475.00 security deposit, and provided a forwarding address in writing on September 16, 2015. The Landlord's Application for Dispute Resolution was filed on October 13, 2015, clearly beyond the 15 day period. Therefore, I find that the landlord is liable to the tenant for double the amount that the tenant did not agree that the landlord could keep, or \$1,800.00.

Having found that the landlord is owed \$2,950.00, I set off the amount of \$1,800.00. Since the landlord has been successful with the application the landlord is also entitled to recovery of the \$50.00 filing fee. I order the landlord to keep the security deposit and I grant a monetary order in favour of the landlord for the difference in the amount of \$1,200.00.

Calculation:

Security deposit - \$1,475.00 – \$575.00 agreed by tenants = \$900.00 held in trust

Double - \$900.00 X 2 = \$1,800.00 held in trust

\$2,950.00 + \$50.00 filing fee = \$3,000.00 owed to landlords

\$3,000.00 – \$1,800.00 = \$1,200.00.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit, and I grant a monetary order in favour of the landlord as against the tenants pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$1,200.00. This order is final and binding and may be enforced.

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: February 05, 2016

Residential Tenancy Branch

