



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement; for an order permitting the landlords to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

The landlords and the tenant attended the hearing, each gave affirmed testimony and the tenant was accompanied by an advocate. The parties were given the opportunity to question each other respecting the testimony and evidence 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

- Have the landlords established a monetary claim as against the tenant for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for damages suffered due to the tenant's failure to comply with the fixed term of the tenancy?
- Should the landlords be permitted to keep all or part of the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first landlord (YHAW) testified that this fixed-term tenancy began on January 4, 2015 and expired on January 3, 2016, however the tenant vacated the rental unit on May 5, 2015. Rent in the amount of \$775.00 per month was payable on the 4th day of each month. At the outset of the tenancy the landlords collected a security deposit from the tenant in the amount of \$387.50 which is still held in trust by the landlords, and no pet damage deposit was collected. The rental unit is a room in a 2-bedroom basement

suite which had an existing tenant at the beginning of this tenancy, and common areas. A copy of the tenancy agreement has been provided.

The landlord further testified that on February 21, 2015 the tenant emailed the landlord indicating her intention to move out of the rental unit, but the email didn't say when. The landlord asked the tenant about it, and the tenant said she would be moving in April, then later changed her mind and said May. No other notice was given by the tenant.

The landlords claim \$3,100.00, being 4 months rent for the tenant's failure to carry out the term of the tenancy agreement. When the tenant originally rented, the unit was advertised at \$850.00 per month but because the tenant was an international student and had limited funds, the landlords agreed to reduce the rent to \$775.00 per month if the tenant was willing to sign a 1 year lease.

Because of the proximity of the rental unit to schools, the landlords advertised to re-rent by placing an advertisement on Craigslist and by posting notices around the colleges. Numerous emails have been provided which are prospective tenants responding to the advertisement, and they all say that the rental amount is \$850.00 per month. The rental unit was re-rented October 31, 2015 and the new tenant pays \$850.00 per month. Further, the tenant notified the landlords of her intention to vacate during a school semester, which made it more difficult to rent.

The tenant provided the landlords with a forwarding address in writing by email on April 29, 2015.

The second landlord (AZ) testified that he was primarily taking care of the emails with respect to re-renting after the tenant moved out. The other tenant was female and preferred a female roommate. There were 26 applications received to rent, 18 of which were male, but the landlord only responded to females.

The existing tenant moved out on October 31, 2015.

The tenant testified that she sent an email to the landlords on April 29, 2015 confirming that she was moving that weekend, and actually moved out on Saturday, May 2, 2015.

The tenant further testified that she met with one of the landlords in the mechanical room and the tenant asked if the landlords wanted the tenant to introduce a friend to take over the lease, but he stated that the other landlord was upset and thinking about whether or not they would continue to rent.

Analysis

The *Residential Tenancy Act* does not permit a tenant to vacate a rental unit prior to the end of a fixed-term unless the landlord agrees in writing. However, the *Act* also requires a party who makes a claim against another party to do whatever is reasonable to mitigate any loss suffered.

I also refer to Residential Tenancy Policy Guideline #3 - Claims for Rent and Damages for Loss of Rent, which states, in part:

In all cases the landlord's claim is subject to the statutory duty to mitigate the loss by re-renting the premises at a reasonably economic rent. Attempting to re-rent the premises at a greatly increased rent will not constitute mitigation, nor will placing the property on the market for sale.

In a fixed term tenancy, if a landlord is successful in re-renting the premises for a higher rent and as a result receives more rent over the remaining term than would otherwise have been received, the increased amount of rent is set off against any other amounts owing to the landlord for unpaid rent or damages, but any remainder is not recoverable by the tenant.

In this case, rent in the amount of \$775.00 per month was payable on the 4th day of each month, regardless of what the landlords could have rented it for at the beginning of the tenancy. I am not satisfied that the landlords have mitigated the loss and I find that it is reasonable to assume that the landlords may have found a replacement tenant sooner had the rental unit been advertised at \$775.00 per month. However, the tenant breached the *Act* and the tenancy agreement by moving out of the rental unit prior to the end of the fixed term.

The *Act* also specifies that a tenancy ends at 1:00 p.m. on the day before rent is payable under the tenancy agreement, which in this case is the 4th of each month. The tenant testified that she vacated the rental unit on May 2, 2015 and the landlord testified the tenant moved out May 5, 2015. Where it boils down to one person's word over another, the benefit of the doubt goes to the tenant. In a month-to-month tenancy, a tenant is required to give written notice to vacate a rental unit the day before rent is payable under the tenancy agreement, and must not end the tenancy before one month after that. I find that the tenant owes the landlords \$775.00 for May's rent, but due to the landlords' failure to fully mitigate any losses suffered by advertising at a greatly increased amount, I find that the tenant is not liable for any further amounts.

The landlords hold a security deposit in the amount of \$387.50, and I order the landlords to keep that in partial satisfaction of the claim. Since the landlords have been

partially successful with the application, the landlords are also entitled to recovery of the \$100.00 filing fee. I order the landlords to keep the security deposit in partial satisfaction of the claim, and I grant a monetary order in favour of the landlords for the difference in the amount of \$487.50.

Conclusion

For the reasons set out above, I hereby order the landlords to keep the \$387.50 security deposit and I grant a monetary order in favour of the landlords as against the tenant pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$487.50.

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: March 04, 2016

Residential Tenancy Branch