



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, FF

Introduction

This hearing was convened by way of conference call in response to the landlord's application for an Order permitting the landlord to keep all or part of the tenants' security and pet deposit; for a Monetary Order for money owed or compensation for damage or loss under the *Residential Tenancy Act (Act)*, regulations or tenancy agreement; and to recover the filing fee from the tenants for the cost of this application.

One of the tenants (JL) and the landlord attended the conference call hearing, and were given the opportunity to be heard, to present evidence and to make submissions. The landlord provided documentary evidence to the Residential Tenancy Branch and to the other party in advance of this hearing. The tenant confirmed receipt of evidence. I have reviewed all oral and written evidence before me that met the requirements of the rules of procedure; however, only the evidence relevant to the issues and findings in this matter are described in this Decision.

Preliminary Issues

At the outset of the hearing the tenant attending advised that she has now legally changed her last name and would like this recorded as such on the decision. The landlord did not raise any objections to the tenant's name being altered on the style of cause and this has now been amended.

Issue(s) to be Decided

- Is the landlord permitted to keep the security and pet deposit?
- Is the landlord entitled to a Monetary Order for money owed or compensation for damage or loss?

Background and Evidence

The parties agreed that tenancy started on March 01, 2013 for a fixed term of one year. After this period the parties did not enter into a new tenancy agreement and the tenancy continued on a month to month basis. Rent for this unit was \$1,500.00 per month and this increased to \$1,537.00 per month on July 01, 2015. The tenants paid a security deposit of \$750.00 on February 11, 2013 and a pet deposit of \$750.00 on March 01, 2013.

The landlord testified that the tenants were served a Notice to End Tenancy for cause on September 27, 2015 with a move out date of October 30, 2016. On October 06, 2015 the tenants filed an application for dispute resolution to cancel the Notice. The landlord attempted to file a cross application but their file could not be combined with the tenants' file to be heard on December 11, 2015 due to the timing of the landlord's application. The landlord testified that this application and timing of the hearing effectively allowed the tenants to remain in the rental unit for the month of November and part of December, 2015.

The landlord testified that all of their research showed that if the tenants' dispute hearing on December 11, 2015 ruled in the landlord's favour and the tenants had to vacate the rental unit then the earliest they could vacate would be December 31, 2015. The landlord testified that she was then surprised when she received an email from the tenants on November 27, 2015 stating that they were going to vacate the rental unit on November 29, 2015. The landlord testified that three days was not sufficient time to get the rental unit re-rented for December and the tenants vacated on November 30, 2015.

The landlord testified that advertisements were placed on an internet site on December 03, 2015 and some viewings took place the first week of December; however, new tenants could not be found and the unit was not re-rented until January 01, 2016. The landlord therefore seeks to recover a loss of rent for December of \$1,537.00 and seeks an Order to be permitted to keep the security and pet deposit to offset against this monetary claim. The landlord also seeks to recover the filing fee of \$50.00.

The tenants disputed the landlord's claim to recover rent for December, 2015. The tenants testified that they attempted to find a resolution with the landlord to enable them to stay in the rental unit and were advised to look for a place to live but if nothing could be found they could stay in the rental unit until the hearing on December 11, 2015; however, if they were unsuccessful at a hearing they may have to leave the unit in two days if the landlord received an Order of Possession at the hearing.

The tenant testified that due to this they started looking for new accommodation and at the last minute found something suitable so they gave notice to the landlord to end the tenancy

at the end of November, 2015. Rent was paid for November, 2015. The tenants testified that the only reason they moved was because the landlord evicted them and they should not be responsible for rent for December, 2015.

The parties attempted to reach a settlement during the hearing but this could not be achieved.

Analysis

I have carefully considered all the evidence before me, including the sworn testimony of both parties.

Section 44 of the *Act* sets out when a tenancy agreement will end. A tenant is not liable to pay rent after a tenancy agreement has ended pursuant to this provision; however, if a tenant remains in possession of the premises (overholds), the tenant will be liable to pay occupation rent on a *per diem* basis until the landlord recovers possession of the premises. In certain circumstances, a tenant may be liable to compensate a landlord for loss of rent.

With this in mind I refer the parties to the Residential Tenancy Policy Guidelines #3 which provides guidance on matters concerning rent and a loss of rent and states, in part, that:

If a month to month tenancy is ended for cause, even for a fundamental breach, there can be no claim for loss of rent for the subsequent month after the notice is effective, because a notice given by the tenant could have ended the tenancy at the same time.

Consequently, it is irrelevant whether or not the tenants gave three days' notice to end the tenancy, The One Month Notice had already been given by the landlord and the landlord could have attempted to re-rent the unit prior to the tenants moving out. Then if the tenants continued to overhold in the rental unit until the hearing on December 11, 2015 the landlord could have changed the tenants rent on a per diem basis. There is no provision under the *Act* for an Arbitrator at a hearing to let tenants stay in a rental unit until the end of a month that the hearing is held in. In normal circumstances if the effective date of a Notice to End Tenancy has passed by the time a hearing is held and the Arbitrator sets aside the Notice and dismisses a tenant's application then a landlord could be issued with an Order of Possession that is effective two days after it is served and not the end of the month unless requested by the landlord.

Due to the provisions of the *Act* and the Policy Guidelines I find the landlord's claim to recover a loss of rent for December, 2015 is dismissed.

As the landlord's monetary claim has been dismissed I Order the landlord to return the security and pet deposits to the tenants pursuant to s. 38(6)9b) of the *Act*. A Monetary Order has been issued to the tenants to this effect pursuant to s. 67 of the *Act*.

As the landlord's claim has no merit I find the landlord must bear the cost of filing their own application.

Conclusion

The landlord's application is dismissed in its entirety without leave to reapply.

A copy of the tenants' decision will be accompanied by a Monetary Order for **\$1,500.00** for the return of the deposits. The Order must be served on the landlord. Should the landlord fail to comply with the Order the Order may be enforced through the Provincial (Small Claims) Court of British Columbia as an Order of that Court.

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: July 07, 2016

Residential Tenancy Branch