



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPC, MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlords seeking an Order of Possession for cause; 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 per damage deposit or security deposit; and to recover the filing fee from the tenant for the cost of the application.

Both landlords and the tenant attended the hearing, and each gave affirmed testimony. The tenant was also assisted by a Legal Advocate. The parties were given the opportunity to question each other with respect to the testimony and evidentiary material provided by the parties, 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.

At the commencement of the hearing, the parties agreed that the tenancy has ended, and the landlords' application for an Order of Possession is withdrawn.

Issue(s) to be Decided

The issues remaining to be decided are:

- 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 loss of rental revenue?
- Should the landlords be permitted to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first landlord testified that this month-to-month tenancy began on April 1, 2015 and the tenant moved out of the rental unit on October 1, 2016. Rent in the amount of \$1,250.00 per month was payable on the 1st day of each month, which was reduced to \$1,200.00 per month by agreement of the parties when the tenant no longer had a horse on the property. There are no rental arrears, and a copy of the tenancy agreement has been provided.

The landlord further testified that although the tenancy agreement specifies a security deposit of \$1,250.00 and a pet damage deposit of \$1,250.00, the landlords only collected half a month's rent for the security deposit and half a month's rent for the pet damage deposit, for a total of \$1,250.00 which is still held in trust by the landlords.

The tenant was personally served by the landlord's spouse with a 1 Month Notice to End Tenancy for Cause on September 8, 2016, and the landlord was present. A copy has been provided and it is dated September 8, 2016 and contains an effective date of vacancy of October 1, 2016. The reasons for issuing it are:

- "Tenant or a person permitted on the property by the tenant has:
 - significantly interfered with or unreasonably disturbed another occupant or the landlord;
- Tenant knowingly gave false information to prospective tenant or purchaser of the rental unit/site or property/park.

The rental unit is a single family dwelling and the landlords had listed it for sale. The tenant sabotaged the sale of the home by telling people there were problems with the house that weren't true, such as that the house cost a fortune to heat, it was poorly constructed, and kept refusing entry for prospective purchasers and the realtor. The realtor stopped showing the house not wanting to put clients into that and told the landlords that the tenant was too unstable for showings. Even with written notice, it didn't matter.

The landlord also testified that the landlords received a letter from the tenant dated September 1, 2016 wherein the tenant says she'd like to cooperate and suggests a better plan. That could have been done, and written notice was given to the tenant for showings, but the tenant went to the realtor's office and threatened the realtor. Copies of the tenant's letter as well as an email from the real estate office have both been provided. The email from the realtor's office states that the tenant attended the office, was mad and aggressive, said she'd call the police if anyone entered onto the property, and slammed the door when she left.

The landlord also testified that the tenant threatened to burn the house down and the landlords pressed charges. The tenant was charged with uttering threats and released on a 'Promise to Appear' with an Undertaking Given to a Peace Officer or Officer in Charge, copies of which have been provided. They are dated September 8, 2016 and specify that the tenant is to abstain from communicating directly or indirectly with the landlords or to attend the landlords' property, and the landlord testified that the police advised the landlords not to contact the tenant.

When the landlords served the tenant with the notice to end the tenancy, the tenant said that she couldn't move out within a month and needed more time so the landlords knew that it wouldn't be re-rented for October 1, 2016. However, the tenant moved out on October 1, 2016. Around the 15th of October, the landlords placed an advertisement to re-rent in the local newspaper and were successful in finding another tenant who will be moving in on November 15, 2016.

The landlord testified that the landlords were not able to show the rental unit to prospective tenants or prospective purchasers, and were unable to contact the tenant. As a result, the landlords have lost rental revenue from October 1, 2016 to November 15, 2016. If the tenant hadn't caused problems showing the rental unit she might still be living there. The condition of the rental unit at the end of the tenancy wasn't bad except for major cleaning to be done, however no move-in or move-out condition inspection reports were completed.

The second landlord testified that when the tenant's threats started, that pushed things too far, and the landlords should have issued the notice to end the tenancy sooner.

The tenant testified that no move-in or move-out condition inspection reports were completed and the tenant had an agent contact the landlords about a move-out condition inspection. The tenant's agent was not contacted by the landlords to schedule a condition inspection and has provided a letter dated October 25, 2016 confirming that.

The tenant also testified that on September 1, 2016 the tenant gave to the landlords a letter stating that the tenant wanted to be cooperative with showings, and asked for a schedule. A copy of the letter has been provided. The landlords never proposed a schedule, and the realtor gave notice and showed the rental unit once after that, but the tenant wasn't there.

The tenant's Advocate prepared a letter to the landlords confirming that the tenant moved out October 1, 2016 in accordance with the landlords' notice to end the tenancy, and requesting return of the deposits with a forwarding address. The tenant mailed the

letter, and a copy has been provided. It is dated October 3, 2016, and the tenant testified that no response from the landlords has been received.

The tenant further testified that the landlords knew the tenant hadn't made any threats and don't mind lying to the Courts.

The tenant has also provided a CD for viewing, and the tenant testified that the condition of the rental unit as shown on the CD is the condition that the tenant left the rental unit in, and is very similar to the photographs in the advertisement by the realtor.

Analysis

Where a landlord makes a claim for loss of rental revenue, the onus is on the landlord to establish that the landlord's inability to re-rent was a result of the tenant's failure to comply with the *Residential Tenancy Act*, and what the landlord did to mitigate such loss. In this case, the landlords issued a notice to end the tenancy effective October 1, 2016 and didn't advertise it for rent until around October 15, 2016, testifying that the landlords were not able to show the rental unit to prospective tenants or purchasers due to the tenant's refusal to allow entry and the Undertaking Given to a Peace Officer or Officer in Charge.

The tenant moved out in accordance with the notice given by the landlords even though it was an incorrect effective date. The tenant may have refused showings for potential purchasers, but moved out of the rental unit before the landlords advertised the rental unit for rent. I cannot find that the landlords lost revenue as a result of the tenant's failure to allow showings for the sale of the rental unit or that the landlords could not re-rent due to the tenant's behaviour when the landlords didn't even advertise for rent until 15 days after the tenant moved out. I am not satisfied that the landlord's inability to re-rent was a result of the tenant's failure to comply with the *Act* or the tenancy agreement, and the landlords' application for monetary compensation is dismissed.

The landlords hold a security deposit in the amount of \$1,250.00, and filed the application for dispute resolution prior to the end of the tenancy. The landlords testified that they received the tenant's forwarding address in writing in October, 2016, and I order the landlords to return it to the tenant forthwith.

Conclusion

For the reasons set out above, the landlords' application for an Order of Possession is hereby dismissed as withdrawn.

The landlords' application for a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement is hereby dismissed.

I order the landlords to return the \$1,250.00 security deposit to the tenant.

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: November 17, 2016

Residential Tenancy Branch