



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, FF

Introduction

This was a hearing with respect to the landlords' application for a monetary award and an order to retain a security deposit and pet deposit. The hearing was conducted by conference call. The landlords and the named tenant called in and participated in the hearing. The tenant was represented at the hearing by Ms. J. N., acting as his agent.

Issue(s) to be Decided

Are the landlords entitled to a monetary award and if so, in what amount?

Are the landlords entitled to retain all or part of the security deposit and pet deposit?

Background and Evidence

The rental unit is a two bedroom lower suite in the landlord's house on Kamloops. The tenants did not live in the vicinity of the rental property and they rented the house after viewing photographs and exchanging e-mails with the owners. The parties entered into a tenancy agreement for a fixed term beginning April 16, 2016 and ending March 31, 2017. The rent was \$1,600.00, payable on the first of each month. According to the tenancy agreement drafted by the landlords the tenants were required to pay a non-refundable deposit of \$1,600.00 and an additional pet deposit of \$800.00.

The landlords testified that the tenants brought a dangerous dog to the rental property when they moved in. According to the landlord, prospective tenants, who were scheduled to move into the upper unit of the rental property, refused to move in because of the presence of the tenants' dog. The landlords said that the upper tenants were concerned about having an aggressive dog around their young children. The landlords claimed that they lost rent for the month of May on account of the tenants' dog. In the landlords' application for dispute resolution, they claimed a monetary award of \$2,400.00, but in a monetary order worksheet the landlords stated an increased

claim; they claimed \$1,600.00 for lost rental income for May. The landlords claimed that the tenants moved out of the rental unit without giving proper notice. They claimed lost rent for the month of June in the amount of \$1,600.00. The landlords claimed the estimated amount of \$150.00 for removal of pet waste and garbage and a further estimated amount of \$150.00 for carpet cleaning required because the tenant had pets in the rental unit, for a total claim of \$3,500.00.

The tenants provided copies of text messages exchanged with the landlords. At the end of April the landlord advised the tenants that the intended tenants of the upper unit decided not to move in because one of the tenants' three dogs was unpredictable. The landlord stated that the dog had to go or the tenants must move out of the rental unit. On May 16, 2016 the tenant responded by text message stating that they were looking for a place so they could move out accordingly. The landlord replied as follows: "OK thanks for letting us know if you are out by the end of May you won't have to pay another round of rent Let us know the dates ASAP".

The tenant testified that they moved out on June 1st. The landlords said that they did not receive notice from the tenants until after they had moved. The landlords submitted photos of the rental unit that they said showed that the rental unit was not properly cleaned at the end of the tenancy.

The tenant and their representative testified that the tenancy ended by mutual agreement as evidenced by the text messages exchanged and the tenants move out pursuant to that agreement. The tenant claimed that the landlords harassed and bullied them to move beginning within a week of moving into the rental unit. The tenants disputed the landlords' claims for loss of rental income. They said that text messages showed that someone moved into the upper unit and according to e-mail messages a new tenant was ready to move into the rental unit on June 2, 2016.

The tenants did not file an application for dispute resolution, but they submitted a monetary worksheet wherein they set out claims totalling \$9,971.12. They claimed payment of double their security and pet deposits, reimbursement of moving expenses, compensation for moving the landlord's furniture and reimbursement of rent paid. The tenants sent the landlord a letter dated June 7, 2016 wherein they provided a forwarding address and requested the return of their security and pet deposits.

The landlord commenced their application to seek a monetary award and claim the deposits on June 23, 2016.

With respect to the claim for loss of rental income from the rental unit, the evidence disclosed that the parties mutually agreed to end the tenancy. The landlord's expectation was that the tenants would move out at the end of May. The tenant testified that they moved out on June 1st and new tenants were immediately ready to move in on June 2nd. The landlords denied that new tenants moved into the rental unit in June and referred to a text message dated June 4, 2016 when the tenants advised that they had moved out. The landlord did not submit a copy of the tenancy agreement with the new occupants of the rental unit. The tenants referred to an e-mail exchange between the landlord and the new occupants dated June 4, 2016. The new occupants said that the tenants left mounds of household garbage and bags of dog waste at the rental property. He said that he would load it up and take it to the dump. He also said he would sign and return a copy of the lease to the landlord.

Analysis

The landlord has claimed loss of rental income for the upper suite said to have been left vacant because of the presence of the tenant's dangerous dog and for the actual rental unit because the tenants did not give the landlord proper notice when they moved out.

I find that the tenants are not liable for the landlord's claimed rental loss for the upper suite. The landlord did not submit a copy of a tenancy agreement with the intended tenants of the upper unit. I find that the landlord has not satisfied the burden of proving this claim on a balance of probabilities. I find as well that the claim for loss of rental income from the upper unit based on the presence of the tenants' dogs is not a claim for which the tenants can be found liable, where the landlord agreed to rent to the tenants without first viewing the tenants pets; I find that the landlord assumed the risk of loss and the claim for loss of rental income for a different rental unit than the unit occupied by the tenants, based on the presence of pets is too remote to be recovered from the tenants.

The landlord claimed that the tenants failed to move out of the rental unit by May 30th and did not notify the landlord that they had moved until June 4th. The landlord said the unit was un-tenanted for the month of June. The landlords did not submit a copy of a tenancy agreement to confirm their evidence. The tenant said the new occupants were preparing to move within a day of the tenants moving out. The June 4, e-mail exchange with the landlord and the new tenant confirms that he was at the rental property and performed cleanup work and promised to return a signed tenancy agreement in two days. The evidence provided does not confirm that the new tenants moved in and paid rent to the landlord for the month of June, but the rental unit was vacated and the landlord and the prospective tenant had access to it from June 4th onwards. On the

evidence presented I find that the landlord is entitled to recover loss of rent for half of June, but not for the full month because the tenancy ended by mutual agreement and the tenants were not required to give proper written notice because they agreed to leave without being evicted at the request of the landlord. I award the landlord the sum of \$800.00 for loss of rental income for the period from June 1, to June 15, 2016, but not afterwards; I find that the landlord has not proved any greater loss and should not be entitled to further compensation because the tenancy ended without notice at the landlord's request and they should bear any additional loss after June 15th.

The landlord claimed the sum of \$150.00 for carpet cleaning and submitted an invoice for cleaning in the amount of \$222.50 at an hourly rate of \$89.00. I allow the landlord's claim in the amount of \$150.00 as claimed for carpet cleaning, rather than for the invoiced amount. The landlord did not submit any invoice for cleaning up dog waste and this claim is denied.

The total award to the landlords is the sum of \$950.00; all other claims are dismissed without leave to reapply. The landlords are entitled to recover the \$100.00 filing fee for their application for a total award of \$1,050.00

The tenant did not file an application for dispute resolution although he included a monetary order worksheet seeking various amounts. Without a filed application for dispute resolution from the tenant I am not able to make an award to the tenant for amounts he claimed in his evidence in reply to the landlord's claim. I am, however, able deal with the security deposit and pet deposit held by the landlord.

Residential Tenancy Policy Guideline 17 provides policy guidance with respect to security deposits and setoffs; it contains the following provision:

RETURN OR RETENTION OF SECURITY DEPOSIT THROUGH ARBITRATION

1. The arbitrator will order the return of a security deposit, or any balance remaining on the deposit, less any deductions permitted under the Act, on:
 - a landlord's application to retain all or part of the security deposit, or
 - a tenant's application for the return of the deposit unless the tenant's right to the return of the deposit has been extinguished under the Act. The arbitrator will order the return of the deposit or balance of the deposit, as applicable, whether or not the tenant has applied for arbitration for its return.

In this application the landlords requested the retention of the security deposit and pet deposits in partial satisfaction of their monetary claim. Because the claim has been

allowed in an amount less than the deposits held by the landlord and the remaining claims dismissed without leave to reapply, it is appropriate that I order the return of the balance of the tenant's security deposit and pet deposit. The deposits total \$2,400.00. The landlord has been awarded \$1,050. leaving a balance of \$1,350.00 to be returned to the tenant. The landlords filed their application within 15 days of receiving the tenant's forwarding address and there is no basis for a claim by the tenant for payment of double the amount of the deposits. I grant the tenant a monetary order in the amount of \$1,350.00. This order may be registered in the Small Claims Court and enforced as an order of that court.

Conclusion

The landlords have been awarded a portion of the security deposit in satisfaction of their claims. The tenant has been granted a monetary order for the balance of the deposits in the amount of \$1,350.00.

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: January 13, 2017

Residential Tenancy Branch