



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 scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has requested compensation for loss of rent revenue, damage to the rental unit, to retain the security deposit and to recover the filing fee from the tenant for the cost of this Application for Dispute Resolution.

The landlord provided affirmed testimony that on August 18, 2016 copies of the Application for Dispute Resolution and Notice of Hearing and evidence were sent to the estate of tenant by registered mail. The landlord used the address provided by the executrix of the estate. A Canada Post tracking number and receipt was provided as evidence of service. The mail was delivered on August 23, 2016.

Therefore, I find that these documents were served on August 23, 2016, in accordance with section 89 Act.

No one for the estate of the tenant attended the hearing.

Issue(s) to be Decided

Is the landlord entitled to compensation in the sum of \$900.00 for loss of August 2016 rent?

Is the landlord entitled to compensation for power washing in the sum of \$100.00 and a carbon monoxide alarm in the sum of \$40.00?

May the landlord retain the security deposit in partial satisfaction of the claim?

Background and Evidence

The one year tenancy commenced on March 1, 2016, to end February 28, 2017. Rent was \$900.00 per month. A copy of the tenancy agreement was supplied as evidence. At the end of June 2016 the tenant deceased. The rental unit was occupied by family members during the month of July 2016. The tenancy agreement required the tenant to pay the last months' rent in advance. The landlord received that payment and applied it

to July 2016 rent during the time the family occupied the rental unit. The landlord obtained possession of the unit on August 1, 2016.

The driveway was damaged and needed power washing. The tenant removed the carbon monoxide alarm; it was replaced.

The landlord said the unit was not kept in good shape by the family members, so it was not shown during the month of July. The landlord lost revenue for August 2016 as a result.

The issue of frustration was raised with the landlord. As the tenant was deceased the landlord was asked if the terms of the tenancy agreement could then expected to be carried out. The landlord said that there was a loss of income for August that should be covered by the estate.

Analysis

As the estate for the respondent was served with Notice of this hearing and did not attend to oppose the claim I find that the landlord is entitled to compensation for the power washing and carbon monoxide alarm.

I have considered the claim for loss of rent revenue against a fixed term tenancy agreement that ended due to the death of the tenant. Residential Tenancy Branch policy provides guidance on frustration:

“A contract is frustrated where, without the fault of either party, a contract becomes incapable of being performed because an unforeseeable event has so radically changed the circumstances that fulfillment of the contract as originally intended is now impossible. Where a contract is frustrated, the parties to the contract are discharged or relieved from fulfilling their obligations under the contract.”

Despite the absence of the executrix of the estate at the hearing, I cannot ignore the fact that the tenant deceased at the end of June, 2016. I find that the death of the tenant rendered the tenancy agreement contract frustrated effective the end of June 2016 as it was now impossible for the tenant to fulfill the terms of the contract. Therefore, pursuant to section 44(1)(e) of the Act I find that the tenancy ended effective June 30, 2016.

There was no evidence before me that the tenancy contract was assigned to the estate; therefore I find there was no legal obligation for the respondent to fulfill the obligations of the contract. Family members occupied the unit for one month and one day while the unit was emptied. The landlord has been compensated for the days in July 2016 that the unit was occupied. A landlord is not entitled to payment of the last months' rent in advance; however the landlord was holding that payment which was applied to per diem occupation for July 2016.

Therefore, I find that the landlord is entitled to compensation for each day that the rental unit was occupied by members of the tenants' family in August 2016. As the landlord

obtained possession of the rental unit on August 1, 2016 I find that the landlord is entitled to compensation in the sum of \$29.59 as per diem rent for that day.

The balance of the claim for loss of revenue is dismissed.

Therefore the landlord is entitled to total compensation in the sum of \$169.59.

As the landlord's application has merit I find, pursuant to section 72 of the Act that the landlord is entitled to recover the \$100.00 filing fee from the respondent for the cost of this Application for Dispute Resolution.

I find that the landlord is entitled to retain the tenant's security deposit in the amount of \$269.59 in satisfaction of the monetary claim.

Residential Tenancy Branch policy suggests that when a landlord applies claiming against a deposit any residue of the deposit should be ordered returned to the tenant. Therefore, as there is a balance of the security deposit of \$180.41 I order the landlord to return that amount to the respondent.

Conclusion

The landlord is entitled to compensation in the sum of \$169.59. The balance of the claim is dismissed.

The landlord is entitled to filing fee costs.

The landlord is entitled to retain the tenant's security deposit in satisfaction of the monetary claim.

The balance of the security deposit is ordered returned to the respondent.

This decision is final and binding and 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 17, 2017

Residential Tenancy Branch