



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes OPB, OPM, OPN, MNR, MNDC, MNSD, FF, O
 MNSD, OLC, FF

Introduction

This hearing was convened by way of conference call concerning applications made by the landlord and by the tenants. The landlord has applied for an Order of Possession; for a monetary order for unpaid rent or utilities; 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 landlord to keep all or part of the pet damage deposit or security deposit; and to recover the filing fee from the tenants for the cost of the application. The tenants have applied for a monetary order for return of all or part of the pet damage deposit or security deposit; for an order that the landlord comply with the *Act*, regulation or tenancy agreement; and to recover the filing fee from the landlord.

The landlord and both tenants attended the hearing and each gave affirmed testimony. The parties were given the opportunity to question each other and give closing submissions. The parties agreed that all evidence has been exchanged, and all has been reviewed and is considered in this Decision.

At the commencement of the hearing the landlord advised that it was not her intent to apply for an Order of Possession, and withdrew those applications.

Also, the landlord submitted that the Residential Tenancy Branch does not have jurisdiction because the rental unit is intended as vacation rental. Submissions on that issue were made by the landlord and by the tenants. The tenancy agreement specifies a fixed term tenancy for 6 months with an option to renew at a weekly rate. Nowhere in the tenancy agreement does it specify that the rental unit is intended as a vacation rental for this tenancy. The tenants dispute that it was intended as a vacation rental, and therefore I find that the *Residential Tenancy Act* applies.

Issue(s) to be Decided

The issues remaining to be decided are:

- Have the tenants established a monetary claim as against the landlord for return of the security deposit?
- Should the landlord be ordered to comply with the *Act* or the tenancy agreement?
- Has the landlord established a monetary claim as against the tenants for unpaid rent?
- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically for maintenance fees to reset a door code and pick up keys?
- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim?

Background and Evidence

The first tenant (JB) testified that this fixed term tenancy began on December 1, 2016 and was to expire on May 31, 2017, however the tenants vacated the rental unit on February 28, 2017. Rent in the amount of \$1,650.00 per month was payable on the 1st day of each month. The rental unit is a single family dwelling in a strata neighbourhood, and a copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that in November, 2016 the landlord collected a security/pet damage deposit from the tenants in the amount of \$500.00. The tenants provided the landlord with a forwarding address in emails and text messages, as well as by serving the Tenant's Application for Dispute Resolution. The landlord has not returned any portion of it.

The landlord was aware that the tenants were looking for a longer term rental and there were no places available. The landlord had told the tenants that they could give 30 days notice to leave earlier, but declined to add it to the tenancy agreement saying that she would remember. The tenants did let the landlord know, and gave a notice to end the tenancy by email. The term in the tenancy agreement states: "For the period from December 1, 2016 to May 31, 2017 with an option, to be exercised by the Owner, to continue the lease on a week to week basis, at a rent to be agreed upon, up to June 30, 2017."

The landlord would agree to certain things and then change her mind, such as allowing the tenants to sub-let. The landlord said to put up an advertisement, which the tenants did, then the landlord said to remove it.

The tenants found 2 suitable tenants to take over the tenancy but the landlord refused them. The parties communicated by email and text messaging and in one email the

landlord says she will charge more money for new tenants. The tenant does not know if the rental unit has been re-rented.

With respect to the landlord's claim for changing codes, the tenant testified that is a scheduled procedure in the strata that happens in every tenancy; tenants come and go and it's routine to change codes.

The tenants claim \$500.00 for return of the security deposit, recovery of registered mail fees and recovery of the \$100.00 filing fee, and the tenants deny the landlord's claim.

The second tenant (DB) testified that prior to signing the tenancy agreement, the parties talked about giving 30 days notice to end the tenancy early. The tenant asked the landlord to put that in the tenancy agreement, but she declined saying that she'd remember. The landlord has chosen not to remember a few things. The landlord had also wanted to be able to give the tenants 30 days notice to move earlier if the landlord's son was going to stay in the rental unit.

The landlord testified that the rental unit is generally rented as vacation rental through a website similar to Air B N B. The owner puts the availability on the website calendar. The operator of the listings would contact the owners if a tenant wants a longer term rental. The amount of rent is determined by the time of year for all of the units. The rental amounts increase at Easter, May long weekend, and in June each year. It's a 3 bedroom, water front property. The landlord made an exception for these tenants by creating the fixed term tenancy agreement for 6 months.

The landlord denies ever telling the tenants that the rental period could end earlier with 30 days notice, and testified that what the parties had agreed to is written in the tenancy agreement.

The landlord interviewed 2 prospective tenants recommended by the tenants, neither of whom was suitable. One didn't want to pay \$1,650.00 per month and the other had a large dog, which the landlord did not agree with. The rental unit did not re-rent until the end of June, 2017 for the summer months, after advertising on the vacation website. The landlord is not certain when the rental unit was advertised for rent after learning that the tenants intended to vacate. However, the tenants have provided copies of advertisements, some of which show a rental amount of \$199.00 per night.

The landlord claims \$3,300.00 for the loss of rental revenue for April and May, 2017.

The landlord further testified that at the end of the tenancy the tenants wouldn't give the landlord the keys to the rental unit or the garage door opener so the landlord hired

someone to get them. Police had told the landlord not to attend at the rental unit alone. An invoice has been provided in the amount of \$52.50 for: "Service call to reset door code, pick up keys and leave on table," which the landlord claims against the tenants. The landlord agrees that the code is changed each time tenants vacate, and perhaps the amount of the claim should be adjusted. The landlord did receive back the keys and garage door opener.

Analysis

Even if a rental unit is usually rented for vacation use, once a landlord enters into a written tenancy agreement with a tenant, the *Residential Tenancy Act* applies.

A landlord must return a security deposit and/or pet damage deposit to a tenant in full within 15 days of the later of the date the tenancy ends or the date the landlord receives that tenant's forwarding address in writing, or must make an application for dispute resolution claiming against it within that 15 day period. In this case, the first tenant testified that the forwarding address was sent to the landlord in text messages and emails, and in the Application for Dispute Resolution. Providing a forwarding address by those methods is not sanctioned by the *Act* and therefore, I find that the landlord has applied for dispute resolution claiming against it within the time required.

The landlord has applied for monetary compensation for loss of rental revenue for the tenants' failure to comply with the fixed term. In order to be successful, the onus is on the landlord to establish that the landlord did what was reasonable to mitigate any rental revenue lost by advertising the rental unit at a reasonable time after learning that the tenants were moving out and at a similar amount of rent. The landlord was not able to recall when the rental unit was advertised, however the evidentiary material provided by the tenants shows that at least some of the advertisements quote a cost of \$199.00 per night. It does not suffice to advertise the rental unit as vacation property. Therefore, I find that the landlord has failed to mitigate and the \$3,300.00 claim is dismissed.

With respect to the landlord's claim for recoding the entry and having a person attend on site, I accept that police told the landlord not to attend alone, however, I am not convinced that the tenants should bear that cost especially considering that the codes are changed routinely. Further, it is not for me to determine how much of the \$52.50 bill was for re-coding and how much of it was for attendance of the person. The landlord can only be successful if the landlord has established that the cost is a result of the tenants' failure to comply with the *Act* or the tenancy agreement, and I find no evidence of that. The onus is on the landlord to establish the claim and I find that the landlord has failed to do so.

Having dismissed the landlord's monetary claim, I must also dismiss the landlord's application to keep the security deposit, and I grant a monetary order in favour of the tenants in the amount of \$500.00.

The tenants claim registered mail costs which is not recoverable under the *Act*. However, since the tenants have been successful with the application the tenants are entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application for a monetary order for unpaid rent is hereby dismissed.

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

The landlord's application for an order permitting the landlord to keep all or part of the security deposit is dismissed.

I hereby grant a monetary order in favour of the tenants as against the landlord pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$600.00.

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: September 20, 2017

Residential Tenancy Branch