



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCT, FFT

Introduction

This hearing was convened by way of conference call concerning an application made by the tenants seeking a monetary order for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and to recover the filing fee from the landlord for the cost of the application.

One of the tenants attended the rental unit with her mother, who was also occupying the rental unit, but did not testify or take part in the hearing. The landlord also attended. The parties each gave affirmed testimony and were given the opportunity to question each other and give submissions. No issues with respect to service or delivery of documents or evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issue(s) to be Decided

Have the tenants established a monetary claim as against the landlord for money owed or compensation for damage or loss under the *Act*, regulation or tenancy agreement, and more specifically double the monthly rent for the landlord's failure to use the rental unit for the purpose contained in a notice to end the tenancy, and for the landlord's failure to return all or part of the pet damage deposit or security deposit?

Background and Evidence

The tenant testified that this fixed term tenancy began in May, 2012 and was renewed yearly. Rent in the amount of \$1,800.00 per month was payable on the 15th day of each month and there are no rental arrears. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$900.00 as well as a pet damage deposit in the amount of \$900.00. The rental unit is a single family dwelling with a basement suite, and the tenants rented the entire house. A copy of the tenancy agreement has been provided as evidence for this hearing.

The tenant further testified that the landlord served a Two Month Notice to End Tenancy for Landlord's Use of Property, and a copy has been provided for this hearing. It is dated March 15, 2018 and contains an effective date of vacancy of May 18, 2018. The reason for issuing it states: "The rental unit will be occupied by the landlord or the landlord's close family member (parent, spouse or child, or the parent or child of that individual's spouse)." The tenants moved out on May 11, 2018, however, the landlord's son didn't move into the rental unit and the landlord sold the house on June 27, 2018.

The parties had completed a move-in and a move-out condition inspection report, and the move-out portion was completed on May 17, 2018. The tenants wrote their forwarding address on a piece of paper and gave it to the landlord at that time. The landlord emailed the tenants saying that deductions were made for water and sewer bills, but the tenants did not understand how the amounts were calculated. The tenants did not agree in writing that the landlord retain a portion of either deposits, but the landlord returned the sum of \$852.47, and the tenant testified that the tenants were not aware that they could disagree and needed the money for a deposit on their new rental. The landlord has not served the tenants with an Application for Dispute Resolution claiming against the deposits.

The landlord testified that her son had every intention of moving into the rental unit, but the home was for sale prior to issuing the Two Month Notice to End Tenancy for Landlord's Use of Property. The house sold, and the offer to purchase was accepted on May 26, 2018. The purchasers did not re-rent, but moved in and actually took possession on June 27, 2018. When the landlord decided to sell, the parties were still bound by the lease, and the landlord wanted to give as much notice to the tenants as possible, and hoped that the purchasers would keep them as tenants. The landlord's son was going to move in and do some maintenance and upgrading and stay till it sold, but the purchasers wanted it "as is" and no upgrades were completed. The landlord's son didn't want to move in until June 15, 2018 because he had to give notice to his landlord to end that tenancy.

With respect to the security deposit and pet damage deposit, the landlord testified that the husband tenant thanked the landlord for returning a portion of them and the landlord gave the tenants a thorough accounting and a letter of reference for their new rental. The move-out condition inspection report was signed by the tenants which indicated a charge of \$20.00 for cleaning vents and that the water and sewer bills were owed, but the report did not indicate how much of the deposits the landlord could retain.

The landlord also testified that she respected the fixed term, and tried to be as respectful to the tenants as possible by not infringing for showings, and honoring the terms of the lease.

Analysis

The *Residential Tenancy Act* specifies that a landlord may end a tenancy for a close family member to occupy, or after all conditions for the sale of the rental unit have been satisfied. A landlord who ends a tenancy for a close family member to occupy the rental unit, the close family member must move into the rental unit within a reasonable time and must remain in it for at least 6 months. If that doesn't happen, the landlord must provide the tenant compensation in the amount of 2 months rent. In this case, the landlord's close family member didn't move in at all. Therefore, I am satisfied that the tenants have established a claim of double the monthly rent, or \$3,600.00.

The *Act* also requires a landlord to return all of a security deposit and pet damage deposit to a tenant within 15 days of the later of the date the tenancy ends or the date the landlord receives the tenant's forwarding address in writing, or make an application for dispute resolution claiming against the deposit(s), unless the landlord has the written consent of the tenant to withhold any amount. If the landlord fails to do either, the landlord must repay the tenant double. It is not sufficient to provide the tenant with an accounting and assume the tenant agrees by saying thank you for the portion that was returned. In this case, the tenants did not agree in writing, and the landlord only returned a portion. I find that doubling should occur in accordance with the *Act*. The tenants paid deposits to the landlord totaling \$1,800.00 and double that is \$3,600.00. The landlord returned \$852.47, and the difference is \$2,747.53.

Since the tenants have been successful with the application the tenants are also entitled to recovery of the \$100.00 filing fee, and I grant a monetary order in favour of the tenants as against the landlord in the total sum of \$6,447.53.

Conclusion

For the reasons set out above, 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 \$6,447.53.

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: July 27, 2018

Residential Tenancy Branch