



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding PCPM Ltd. agent for Countess Gardens
Inc. and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes **MNDCL-S, FFL**

Introduction

This hearing dealt with a landlord's application for compensation for loss of rent and authorization to retain the tenant's security deposit. The landlord's agents appeared at the hearing; however, there was no appearance on part of the tenants.

Since the tenants did not appear, I explored service of the proceeding package upon the tenants. The landlord's agents submitted that a proceeding package, including supporting documents, were sent to each tenant via registered mail on March 13, 2020 to the forwarding address given to the landlord by the tenant on February 29, 2020. The landlord's agent submitted that both of the registered mail packages were successfully delivered. The landlord provided copies of the registered mail receipts, and the tenant's letter providing the forwarding address, as proof of service. I was satisfied that the tenants were duly served with notification of this proceeding and I continued to hear from the landlord without the tenant's present.

The landlord withdrew its request for recovery of the filing fee as the landlord amended its application to limit its total claim to the amount of the security deposit.

Issue(s) to be Decided

1. Has the landlord established an entitlement to recover loss of rent from the tenants in the amount claimed?
2. Is the landlord authorized to retain the tenant's security deposit?

Background and Evidence

The parties executed a written tenancy agreement for a tenancy set to commence on March 15, 2020 for a fixed term of one year set to expire on March 31, 2021.

The landlord collected a security deposit of \$625.00 and the tenants were required to pay a monthly rent of \$1250.00 on the first day of every month starting April 1, 2020. For the month of March 2020, the tenants were to pay pro-rated rent of \$625.00.

On February 28, 2020 the tenants sent an email to the landlord indicating they wished to cancel the tenancy agreement as things had “fallen through” and tenant enquired as to whether they may receive a refund of the security deposit. On February 29, 2020 the tenant wrote a letter to the landlord indicating “personal circumstances” were preventing the tenants from moving in and indicated the landlord would have sufficient time to re-rent the unit for March 15, 2020. In that same letter, the tenant provided a forwarding address for the landlord to refund the security deposit. The landlord proceeded to file its claim against the security deposit on March 3, 2020.

The landlord’s agents testified that they commenced efforts to re-rent the rental unit but it was not re-rented until April 15, 2020. The landlord lost a month’s rent but has limited its claim to \$625.00.

Documentary evidence provided for my review included a copy of the executed tenancy agreement; emails exchanged between the parties; the tenant’s letter February 29, 2020; and, registered mail receipts for delivery of the proceeding package.

Analysis

Under section 16 of the Act, “[t]he rights and obligations of a landlord and tenant under a tenancy agreement take effect from the date the tenancy agreement is entered into, whether or not the tenant ever occupies the rental unit.”

In this case, I am satisfied the parties entered into a tenancy agreement on February 18, 2020 as evidence by the executed tenancy agreement and receipt of the security deposit. I find the tenants became obligated to fulfill the terms of the tenancy agreement when they entered into the tenancy agreement on February 18, 2020 even if they did not take possession of the rental unit.

Where a tenant enters into a fixed term tenancy agreement, the tenant may be held liable to compensate the landlord for loss of rent for the duration of the fixed term, so long as the landlord does whatever is reasonable to mitigate losses.

The tenant's gave notice of their intention not to fulfill the tenancy agreement at the end of February 2020 for a tenancy set to commence on March 15, 2020 which I find is short notice and the tenants violated their obligations under the tenancy agreement and did not give a legal basis for ending the fixed term tenancy early, as provided under the Act. I am satisfied the tenants' breach of the tenancy agreement and the Act caused the landlord to suffer loss of rent in the amount of \$1250.00 based upon the unopposed evidence presented to me. I am also satisfied the landlord took reasonable measures to mitigate losses as the landlord was able to re-rent the unit for April 15, 2020. Also of consideration is the landlord has limited its claim to the equivalent of one-half of a month's rent which I find is very fair to the tenants. Therefore, I grant the landlord's request to retain the tenant's security deposit in satisfaction of the loss of rent the landlord suffered due to the tenants' breach.

By way of this decision, the landlord is authorized to retain the tenant's security deposit in full satisfaction of all of its losses incurred as a result of this tenancy.

Conclusion

The landlord is authorized to retain the tenant's security deposit in full satisfaction of all of its losses incurred as a result of this tenancy.

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 12, 2020

Residential Tenancy Branch