



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNDCL-S, FFL
 MNSDS-DR, FFT

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 a monetary order for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement; 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; and to recover the filing fee from the landlord. The tenants' application was made by way of the Direct Request process, which was referred to this participatory hearing, joined to be heard with the landlord's application.

The landlord attended the hearing with Legal Counsel, who also acted as interpreter for the landlord. The landlord gave affirmed testimony, and the landlord's Legal Counsel was affirmed to well and truly interpret the hearing from the English language to the landlord's Native language, and from the landlord's Native language to the English language to the best of his skill and ability.

Both tenants also attended the hearing and each gave affirmed testimony.

The parties were given the opportunity to question each other and give submissions.

Some of the evidence provided by the tenants has been numbered and Legal Counsel for the landlord indicated that some numbers are missing in the copies provided to the landlord. The numbers missing have not been uploaded to the Residential Tenancy Branch automated system, and one of the tenants indicated that it may have been a

numbering error. No other issues respecting evidence were raised, and all evidence provided has been reviewed and is considered in this Decision.

Issues to be Decided

- Has the landlord established a monetary claim as against the tenants for money owed or compensation for damage or loss under the *Residential Tenancy Act*, regulation or tenancy agreement, and more specifically for loss of rental revenue?
- Should the landlord be permitted to keep the security deposit in full or partial satisfaction of the claim?
- Have the tenants established a monetary claim as against the landlord for return of all or part or double the amount of the security deposit?

Background and Evidence

The landlord testified that this fixed-term tenancy began on February 20, 2020 and was to expire on February 20, 2021. However the tenants vacated the rental unit on August 31, 2020. Rent in the amount of \$2,500.00 was payable on the 1st day of each month and there are no rental arrears to the end of August, 2020. At the outset of the tenancy the landlord collected a security deposit from the tenants in the amount of \$1,250.00 which is still held in trust by the landlord, and no pet damage deposit was collected. The rental unit is an apartment suite.

The tenants gave notice to end the tenancy by email on July 13, 2020 effective August 31, 2020, but the landlord was in hospital so didn't see it for several days. The tenancy agreement, a copy of which has been provided for this hearing specifies:

"An agreement of fix term for 1 year in Feb.20, 2020 to Feb.19, 2021. To terminate at 12:00 noon on the last day of this rental agreement. At the end of the fixed term on Feb. 19, 2021, the contract can continues with the consent of the owner. The rent will not be increased in second year (limited to 2 tenants) Both parties have the right to terminate the new tenancy, but must notice the other party with 2 month in advance."

The landlord further testified that no move-in condition inspection report was completed at the beginning of the tenancy, and at the end of the tenancy the tenants declined to complete a move-out condition inspection. The landlord had hoped the tenants would make a mutual agreement to end the tenancy, but that was not successful so the landlord didn't believe she would be successful in scheduling, or having the tenants participate in a move-out condition inspection. The parties couldn't agree on it.

The landlord received the tenants' forwarding address sometime in August, 2020.

Legal Counsel for the landlord submitted that there had been a discussion between the parties about signing a mutual agreement to end the tenancy, but that was unsuccessful. As a result, the tenants broke the agreement, and the landlord has been trying to re-rent since the end of July, 2020. Affidavits, emails and correspondence between the parties have also been provided for this hearing.

Legal Counsel for the landlord also submits that the landlord has been renting in the area since 2013 and never had such a difficult time renting, perhaps due to the Pandemic. On July 20, 2020 the landlord advertised on Craigslist and some other websites for \$2,500.00 per month at times, and the amount varied. Almost all previous tenants were young professionals, such as these tenants, or students. A few dozen showings resulted in the prospective tenants going elsewhere, or were deemed not suitable for not providing copies of identification or not having financial documents. Most of the correspondence was done by email. The landlord kept lowering the rental amount to \$2,450.00 and now \$2,350.00 per month.

The first tenant (SM) testified that the parties entered into a fixed term and enlisted an interpreter due to the difficulty conversing with the landlord.

In July, 2020 the tenants' personal situation changed; the tenant lost his job and his wife, who is a nurse, had to move to another community. The tenants gave notice to end the tenancy on July 13, 2020 requesting an early end to the tenancy effective August 31, 2020. The tenants contacted the Residential Tenancy Branch and understood that both participants have a responsibility in the process, and the landlord must attempt to mitigate any loss of rental income, including trying to re-rent at a reasonable amount, and as soon as possible.

Basic communication with the landlord during the 7 week period between the date that the notice to end the tenancy was given to the end of August, was absent or misleading.

The landlord advertised for \$2,550.00 and the tenants reminded the landlord that rent was \$2,500.00. Another \$50.00 was for parking, but there was no parking available; the tenants didn't decline it, as mentioned in the landlord's evidence.

Further, there were significant delays in showings, the first on July 30, 2020. The landlord's agent was fired and the landlord hired another leaving the tenants with confusion and no capacity for the tenants to effectively correspond to facilitate the process. The landlord asked the tenants to arrange showings for an agent, and the tenants got the apartment ready to show and then reached out to the agent, who said

there was no arrangement with the landlord, and advising the tenants to deal directly with the landlord. A copy of the email has been provided for this hearing.

The tenants tried to call the landlord multiple times and interpreters, but the landlord declined all attempts to talk on the phone or meet in person, or speak to the translator provided by the tenants to try to come to a solution.

The landlord's refusal, or inability to communicate in English, and the change in agents are seen by the tenants as obstructive. The rental unit was made available and the tenants mentioned repeatedly that they would try to find another tenant, but received no reply from the landlord at all, and there was no engagement by the landlord. The tenants have also provided text messages between the tenant and the second agent of the landlord, who didn't respond about showings, and when he did respond, he said he couldn't contact the landlord in a reasonable time. It was very difficult to organize showings. The only correspondence with the landlord was an email response seeking 2 months compensation up front and asking the tenants to waive all liability during the showings. A copy has been provided for this hearing, and the tenant testified that the tenants did not sign the waiver.

The landlord did not try to mitigate because a refusal or inability to communicate in any way that may have contributed to finding a new tenant, despite repeated suggestions that the tenants find another tenant or a sub-let. The tenants also asked for information so they could advertise, but the landlord did not respond.

The tenants gave the landlord a forwarding address in an email on August 31, 2020, and also put a copy of the email in an envelope addressed to the landlord and gave it to the Concierge, which is how mail is provided to the landlord.

The second tenant (JB) testified that toward the end of August, 2020 the tenants communicated with the landlord to arrange an inspection at move-out, and in communications, but were never made aware that the landlord hadn't found a tenant. An inspection was completed on August 31, 2020, but no report was prepared, and the tenants understood that the tenancy was complete.

CLOSING SUBMISSIONS OF THE LANDLORD'S LEGAL COUNSEL:

The tenants' presentation is misleading. There is no mention of sub-letting or showing the rental unit for the landlord and the evidence shows that. The emails say that it's the landlord's responsibility to re-rent, but there is no offer to sub-let, and the landlord likely would have agreed. The evidence contains no basis for saying that the landlord wouldn't communicate. The landlord may have been slow in responding, but that would

not have affected her ability to re-rent. One of the Affidavits provided for this hearing states that the rental unit was shown to at least 12 tenants, and all were from the landlord's advertisements. The landlord made great efforts to find a tenant.

Legal Counsel for the landlord also submits that the landlord should be granted leave to reapply for further losses of rental income. The landlord made this application because of the tenants' claim against the security deposit.

CLOSING SUBMISSIONS OF THE TENANTS:

The tenants submit that the emphasis is on the emails, which highlights challenges to communicate with the landlord. At one point the landlord said her phone was broken, but this was a 7 week process. Why would the landlord not respond or accept calls or agree to meet if she was actually willing to come to a mutual agreement as she testified? The landlord sent a Mutual Agreement to End Tenancy which the tenants signed and sent back, but the landlord didn't return a copy signed by the landlord. The tenants have also provided emails from prospective replacement tenants stating that they did provide financial information and identification to the landlord.

The tenants received different emails from the landlord asking for different amounts of money. The tenants didn't intend to leave, nor did they want to leave, but their hands were tied and they felt threatened by the landlord's letters and demands for e-transfers.

Analysis

In this case, the landlord seeks monetary compensation from the tenants for loss of rental revenue from September 1, 2020 to the end of the fixed-term, or until re-rented, and leave to reapply for loss of such revenue depending on the amount that the landlord is able to re-rent for. The parties are well aware that in order to be successful the landlord must be able to demonstrate mitigation – that the landlord did whatever was reasonable to re-rent for the same amount of rent that the tenants had been paying.

I have reviewed all of the evidentiary material, including Affidavits and exhibits. The landlord has provided a copy of an advertisement on Craigslist for \$2,500.00 dated October 5, 2020. The tenants have provided a copy of an advertisement at \$2,550.00 per month with an attached garage. The advertisement is not dated, however the landlord testified that the amount included parking but did not dispute the tenant's testimony that parking was not available. The tenants reminded the landlord on July 18, 2020 that the rent amount is \$2,500.00 and asked for a copy of the Craigslist advertisement so that the tenants can refer to it for prospective tenants.

The landlord's Legal Counsel submitted that the tenants made no offer to sub-let as they testified, and had no basis for saying that the landlord wouldn't communicate. I agree there is nothing in any of the correspondence or other evidence that the tenants suggested a sub-let until after the tenants moved out, however there is evidence in the email correspondence that the tenants asked if the landlord and agents of the landlord wanted assistance finding another tenant, asked for a copy of the Craigslist advertisements to refer people to, and provided photographs to the landlord for the advertisements. Considering the lack of response to the tenant's messages, and lack of interest in meeting with an interpreter provided by the tenants, and lack of communication to the landlord's agents, I am satisfied that there is basis for the tenant's testimony that the landlord wouldn't communicate.

The tenants submitted that the landlord sent a Mutual Agreement to End Tenancy which the tenants signed and sent back, but the landlord didn't return a signed copy. The landlord testified that since the parties could not agree on a mutual agreement to end the tenancy, the landlord felt it would not be possible to schedule a move-out condition inspection. I don't accept that. The tenants have provided an email showing that the mutual agreement signed by the tenants was returned to the landlord, as well as an email dated August 18, 2020 to the landlord's agent suggesting the walk-through on August 30 or 31, 2020, and another dated August 22 stating that it could take place on August 31 any time. On August 23, 2020 the landlord's agent agreed in an email to August 31.

The Affidavit of the landlord's realtor states that the landlord emailed the realtor on July 28, 2020 with the names and telephone numbers of 3 people who had contacted the landlord wanting to view the property. It also states that the realtor conducted showings for approximately 20 separate individuals/groups from July 30 to about September 5, 2020. The Affidavit also exhibits numerous text messages about showings commencing July 28, 2020, but no reference to the amount of monthly rent.

The only advertisement that the landlord has provided is for \$2,500.00 per month posted on Craigslist on October 5, 2020, long after the tenancy had ended. I also note that the landlord's Affidavit exhibits emails from prospective tenants dated August 12, August 13, September 6, September 7, and September 9, 2020 that all caption \$2,550.00 per month. In reviewing the evidence it appears that it wasn't until October, 2020 that the landlord advertised for the same amount of rent that the tenants had been paying.

Although I am satisfied that the landlord has decreased the rent over time, I am not satisfied that the landlord has established mitigation by advertising the rental unit for a

reasonable amount of rent within a reasonable time after learning that the tenants were vacating. The landlord's application is hereby dismissed.

I find that the landlord made the Application within 15 days of receiving the tenants' forwarding address in writing as required by the *Residential Tenancy Act*, and therefore the landlord must return the \$1,250.00 security deposit to the tenants.

Since the tenants have been successful with the application, the tenants are also entitled to recovery of the \$100.00 filing fee.

Conclusion

For the reasons set out above, the landlord's application is hereby 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 \$1,350.00.

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: December 31, 2020

Residential Tenancy Branch