



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes:

MNSD, FF

Introduction

This hearing was scheduled in response to the landlord's Application for Dispute Resolution, in which the landlord has made application requesting retention of the deposits and to recover the filing fee from the tenants for the cost of this Application for Dispute Resolution.

Both parties were present at the hearing. At the start of the hearing I introduced myself and the participants. The hearing process was explained, evidence was reviewed and the parties were provided with an opportunity to ask questions about the hearing process. They were provided with the opportunity to submit documentary evidence prior to this hearing, all of which has been reviewed, to present affirmed oral testimony and to make submissions during the hearing. I have considered all of the evidence and testimony provided.

Preliminary Matter

The details of dispute section of the application set out the landlord's claim for damage or loss under the Act.

Issue(s) to be Decided

Is the landlord entitled to compensation for loss of rent revenue?

May the landlord retain the deposits in satisfaction of the claim?

Is the landlord entitled to the filing fee cost?

Background and Evidence

This fixed-term tenancy commenced on October 16, 2010, to October 31, 2011; at which point the tenancy would convert to a periodic tenancy. Rent was \$1,750.00 per month; a pet deposit of \$200.00 and security deposit in the sum of \$500.00 was paid. A copy of the tenancy agreement was supplied as evidence.

Condition inspection reports were completed.

On October 13, 2011, the tenants signed a written notice indicating they would vacate the rental unit on October 31, 2011. A written forwarding address was given at the end of the tenancy and the landlord applied claiming against the deposits within 15 days.

The landlord stated that the tenants did not provide proper written notice and that as a result she had little time to locate new occupants. The landlord decided to lower the rent to \$1,475.00 and was able to find new occupants effective November 15, 2011. The landlord wishes to retain the deposits, as compensation for a loss toward one half of one month's rent revenue; \$700.00.

The tenants stated they told the landlord's agent they were planning on moving.

Analysis

Section 45(1) of the Act provides:

45 (1) *A tenant may end a periodic tenancy by giving the landlord notice to end the tenancy effective on a date that*

(a) is not earlier than one month after the date the landlord receives the notice, and

(b) is the day before the day in the month, or in the other period on which the tenancy is based, that rent is payable under the tenancy agreement.

In the absence of written Notice given by the tenants prior to October 1, 2011, I find that the written notice given on October 13, 2011, was effective November 30, 2011.

I find that the tenancy ended on October 31, 2011, when the tenants vacated the unit.

I find that the landlord mitigated the claim she is making, by locating new occupants as quickly as reasonably possible, given the date of the written notice provided by the tenants, and, as a result, that the landlord is entitled to the loss of one half of November, 2011, rent in the sum of \$700.00; the amount claimed by the landlord.

The landlord has applied claiming against the security and pet deposits; however, there is no claim before me in relation to any damage caused by a pet. Residential Tenancy Branch policy suggests that a landlord may apply to keep all or a portion of the pet deposit but only to pay for damage caused by a pet; I find this to be a reasonable stance, which is also supported by section 38(7) of the Act.

Section 38 of the Act requires a landlord to return the pet deposit within 15 days of receipt of the written forwarding address, or, that the landlord submit a damage claim against the pet deposit within 15 days. If a landlord fails to do either of these; section 38(6) of the Act requires a landlord to pay double the pet deposit. Therefore, as the landlord did not return the pet deposit and does not have a claim for damage caused by a pet, I find that the landlord is holding a pet deposit in the sum of \$400.00.

Section 72(2) of the Act provides a dispute resolution officer with the ability to deduct any money owed by a tenant to a landlord, from a deposit due to the tenant. Therefore, I find that the landlord may retain a portion of the pet deposit, plus the security deposit in the amount of \$200.00 and \$500.00 respectively, in satisfaction of the monetary claim.

Therefore, the landlord will retain \$700.00 of the deposits held in trust and the tenants are entitled to return of the balance of the doubled pet deposit, in the sum of \$200.00; less the \$50.00 filing fee.

Conclusion

I find that the landlord has established a monetary claim, in the amount of \$750.00, which is comprised of \$700.00 loss of November, 2011, rent revenue and \$50.00 in compensation for the filing fee paid by the landlord for this Application for Dispute Resolution.

The landlord will be retaining the tenant's security and a portion of the pet deposit in the amount of \$750.00, in satisfaction of the monetary claim.

The tenant's are entitled to the balance of the doubled pet deposit; \$200.00; less the \$50.00 filing fee cost.

Based on these determinations I grant the tenants a monetary Order for the balance of \$150.00. In the event that the landlord does not comply with this Order, it may be served on the landlord, filed with the Province of British Columbia Small Claims Court and enforced as an Order of that Court.

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: January 31, 2012.

Residential Tenancy Branch