



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

A matter regarding Landmark Realty Mission Ltd.
and [tenant name suppressed to protect privacy]

DECISION

Dispute Codes MNDC, MNSD, FF

Introduction

This hearing was convened by way of conference call concerning an application made by the landlord 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.

An agent for the landlord company and both tenants attended the hearing, and the landlord's agent and one of the tenants gave affirmed testimony. The tenants were also represented by legal counsel.

The parties each provided evidentiary material prior to the commencement of the hearing, and were given the opportunity to cross examine each other on the evidence and testimony provided, all of which has been reviewed and is considered in this Decision.

No issues with respect to service or delivery of documents or evidence were raised.

Issue(s) 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 *Act*, regulation or tenancy agreement?
- Is the landlord entitled to keep all or part of the pet damage deposit or security deposit in full or partial satisfaction of the claim?

Background and Evidence

The landlord's agent testified that this fixed term tenancy began on July 1, 2012 and was to expire on June 30, 2013, although the tenants moved out of the rental unit on February 22, 2013. Rent in the amount of \$2,200.00 per month was payable in advance on the 1st day of each month, and the rent for February, 2013 was paid in full. On June 1, 2012 the landlord collected a security deposit from the tenants in the amount of \$1,100.00 as well as a pet damage deposit in the amount of \$550.00 which was collected on August 1, 2012. A move-in condition inspection report was completed at the beginning of the tenancy and a move-out condition inspection report was completed at the end of the tenancy.

The landlord's agent further testified that when the tenancy began the owner had intended to move back into the rental unit once the fixed term had expired, and the landlord reserved that right by putting a clause in the written tenancy agreement which states that the tenant and the landlord will negotiate another lease at least 30 days prior to the end of the fixed length of time if both parties wished to renew. Early in the tenancy the owners had decided to not re-rent but would be re-occupying the rental unit at the end of the fixed term.

The landlord's agent also testified that the tenants gave notice to end the tenancy on January 18, 2013 with an effective date of vacancy of February 28, 2013. The landlord's agent immediately began advertising for a 4 month tenancy on Craigslist and Kijiji, which are free on-line advertising websites, as well as in 3 local weekly newspapers and on the landlord's agent's website. The tenants were also invited to find new renters.

The landlord's agent also testified that once the tenants gave notice to vacate, the landlord gave an offer to the tenants to mitigate the loss of 4 month's rent by paying the landlord 2 month's rent instead of 4. The parties signed a Mutual Agreement to End tenancy with an addendum wherein the parties agreed that the landlord would be paid \$4,400.00, and the security deposit and pet damage deposit would be applied to the \$4,400.00 and the balance would be paid in 2 equal installments on March 15 and April 15, 2013. The Addendum further specifies that: "If the tenant defaults on this payment schedule, the landlord reserves the right to pursue to the fullest extent, a claim against the tenant for all losses and expenses relating to their early termination of the lease which would have expired June 30, 2013."

After the tenants moved out of the rental unit, they sent an email to the landlord's agent stating that they would not be making those payments and felt they had been misled. The tenants had thought that the rental unit would remain vacant but there was no discussion about that at all.

The landlord's agent testified that had the landlord been successful in re-renting the rental unit, the tenants would not be required to pay the rental loss unless the landlord was forced to collect less rent. The tenants broke both contracts, and once the Mutual Agreement to End Tenancy was signed there was no requirement for the landlord to find a new tenant and the advertisements were cancelled. Furniture was placed in the rental unit after the tenants had vacated so it wouldn't appear vacant. The landlord is now claiming the full amount of \$8,800.00 in lost revenue.

The tenant testified that when they moved into the rental unit, the landlord's agent told the tenants that the owner wanted to rent it for 2 or 3 years, and would have been surprised if the owners wanted to end the tenancy after the first year.

During the course of the tenancy the tenant became jobless but the tenants wanted to honour the fixed term. The landlord's agent had expressed some concern about being able to re-rent it for the 4 months remaining on the lease, and the tenant felt that the options were that the owners would move in on March 1, 2013, the owners would decide the amount owed, and the tenants risked \$8,800 if not re-rented.

On March 6, 2013 the tenant went to the rental unit to deal with some damage done to the roof line by the moving truck. The tenant also attended prior to that to visit neighbours and saw the landlord's vehicle on the property, the sheds were full and the kitchen, living room and dining room were full of furniture. The owners and their dog were also present.

In closing, the tenants' counsel argued that the onus is on the landlord to prove that the damage or loss occurred, and on March 6, 2013 the tenant saw that the landlords had moved into the rental unit.

The landlord's agent submits that costs were incurred by the landlord due to the tenants ending the tenancy early, and the landlord has mitigated the loss by the willingness to negotiate an end date and a lesser amount of rent payable under the contract.

Analysis

The *Residential Tenancy Act* states that a tenant may end a fixed term tenancy by giving the landlord notice effective on a date that is not earlier than one month after the date the landlord receives the notice, and is not earlier than the date specified in the tenancy agreement as the end of the tenancy. If a tenant ends the tenancy earlier, the tenant is expected to compensate the landlord for any loss of revenue that results from the early end to the tenancy, subject to the landlord mitigating any loss. In this case, the landlord attempted to re-rent the rental unit and has provided evidence of having done so, but went the extra step in negotiating a settlement with the tenants for half of the rent the landlord expected to receive under the fixed term tenancy agreement. The parties then entered into another agreement; a Mutual Agreement to End a Tenancy which the tenants also failed to comply with. The tenant testified that the tenants felt misled, but I fail to see how the tenants could have been misled.

The tenant attended the rental unit on March 6, 2013 and found that the rental unit appeared to be lived in. The landlord's agent testified that furniture was placed in the rental unit so that it wouldn't appear vacant, and once the Mutual Agreement to End Tenancy was signed by the parties, the advertisements were cancelled and the landlord was no longer under any obligation to re-rent the rental unit for the balance of the fixed term. In the circumstances, I find that the tenants negotiated 2 contracts with the landlord and failed to comply with the terms of either of those agreements and the landlord is entitled to a monetary order.

With respect to quantum, I have reviewed the Mutual Agreement to End Tenancy and the Addendum, and I find that the landlord has established a claim for the full amount of rent payable, or \$8,800.00.

Since the landlord has been successful with the application, the landlord is also entitled to recovery of the \$100.00 filing fee for the cost of the application.

The landlord currently holds a security deposit in the amount of \$1,100.00 as well as a pet damage deposit in the amount of \$550.00 which I set off from the amounts awarded to the landlord, and I hereby grant a monetary order in favour of the landlord for the difference in the amount of \$7,250.00.

Conclusion

For the reasons set out above, I hereby order the landlord to keep the security deposit and pet damage deposit and I grant the landlord a monetary order pursuant to Section 67 of the *Residential Tenancy Act* in the amount of \$7,250.00.

This order is final and binding on the parties 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: June 28, 2013

Residential Tenancy Branch

