



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes MNSD, MNDC, OLC, O, FF

Introduction

This hearing was convened by way of conference call in response to an application made by the landlord and the tenants. The landlord applied: for money owed or compensation for damage or loss under the *Residential Tenancy Act* (referred to as the “Act”); to keep all or part of the security deposit and for ‘Other’ issues of which none were identified.

The tenants applied: for money owed or compensation for damage or loss under the Act, regulation or tenancy agreement; for the landlord to comply with the Act, regulation or tenancy agreement and for ‘Other’ issues, namely a request to end the tenancy earlier than the fixed term tenancy allows, pursuant to section 45(3) of the Act. Both parties also applied to recover the filing fee for the cost of making the applications.

The landlord appeared for the hearing and provided documentary evidence prior to the hearing and affirmed testimony during the hearing. Both tenants appeared with their legal counsel who also acted as the tenant’s translator and provided a number of submissions during the hearing. The tenants also provided affirmed testimony and documentary evidence in advance of the hearing.

At the start of the hearing, the landlord and tenants confirmed that the tenants had not moved out and the tenancy was still in effect. As a result, I dismissed the landlord’s application to keep the tenants’ security deposit as this portion of the application is premature and can only be dealt with once a tenancy has ended.

The landlord indicated that she had made an application based on the ‘advice’ she was given by the Residential Tenancy Branch (RTB). However, the landlord was unable to explain why she made a monetary claim for losses, simply stating that she was advised to do so by the RTB. The landlord confirmed that she did not seek any monetary losses from the tenants and that she simply wanted the tenancy to continue and not to be broken by the tenants. Based on the landlord’s explanation as to why she made the application, I find that the application was not necessary and as a result, I dismiss the landlord’s application in its entirety as a fixed term tenancy will continue until it is ended in accordance with the Act.

The landlord and tenants worked together to settle the tenants' application for the remainder of the hearing.

Analysis & Conclusion

Pursuant to section 63 of the Act, the Arbitrator may assist the parties to settle their dispute and if the parties settle their dispute during the dispute resolution proceedings, the settlement may be recorded in the form of a decision or an order. During the hearing, the parties discussed the issues between them, engaged in a conversation, turned their minds to compromise and achieved a resolution of their dispute. Both parties agreed to settle the tenants' application in full under the following terms:

1. The landlord agreed that the fixed term tenancy will end at 1:00 p.m. on April 30, 2014. However, the landlord and tenants will work together to find new renters in the interim time period. If the landlord finds a suitable renter to take possession of the rental suite earlier than April 30, 2014, the parties may agree to end the tenancy earlier than the agreed date of April 30, 2014 pursuant to section 44(1) (b) (c), which requires this to be recorded in writing.
2. During the hearing, it was determined that the landlord had taken more than the legal allowable limit for the security deposit from the tenants. As a result, the landlord acknowledged the overpayment and agreed to return to the tenants the other half of security deposit. As a result, the tenants can deduct half a month's rent (\$1,425.00) from their next rent payment pursuant to section 19(2) of the Act. However, if the tenancy ends earlier in accordance with the above condition and the tenants are unable to have the opportunity to recover the security deposit overpayment through a deduction in the rent, the landlord is ordered to pay \$1,425.00 back to the tenants at the end of the tenancy.

The landlord and tenants are cautioned that the rights and obligations for the return of the security deposit at the end of the tenancy are still in effect.

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: February 17, 2014

Residential Tenancy Branch

